F L R

Føroyskt Lógar Rit – Vol. 2, No. 1, Jun 2002

Faroese Law Review – Vol. 2, No. 1, Jun 2002

Sosial Rættindi

F L R

Føroyskt Lógar Rit – Vol. 2, No. 1, Jun 2002
Faroese Law Review – Vol. 2, No. 1, Jun 2002

Sosial Rættindi

Føroyskt Lógar Rit (Faroese Law Review) vol. 2 no. 1 – 2002.

Vanligar ávísingar eru tó loyvdar. Vit mæla til henda hátt: 2 FLR (2001) 117

Tilskrift: postboks 2093, 165 Argir
Telduspostur: tsbirbi@tollskatt.fo

Ongin ábyrgdan fyri gerðir hjá persónum ella stovnum grundað á tilfar í hesum riti verður viðurkend.

ISSN 1601-0809

Prent: Estra Prent

Føroyskt Lógar Rit (Faroese Law Review) vol. 2 no. 1 – 2002.

Usual citations are allowed. We recommend this mode: 2 FLR (2001) 117

Address: P.O. Box 2093, FO-165 Argir, Faroe Islands.
Email: tsbirbi@tollskatt.fo

No responsibility for loss to any person or body acting or not acting as a result of any contents of this publication will be accepted.

ISSN 1601-0809

Printing: Estra Prent

Innihald / Content

Sigmundur Ísfeld, meðritstjóri

Við lógum byggja land

Nú kemur Lógarritið á fjórða sinni. Hesuferð inniheldur ritið tvær greinar. Eina eftir Kára á Rógvi undir heitinum "Fíggjarvald, Fíggjarlóg og Fíggjarrættur", ið viðger grundleggjandi viðurskifti í føroyskum stjórnarrætti, tá um ræður fíggjarvaldið. Hina eftir Biritu Ludvígsdóttir Poulsen undir heitinum "The European Social Charter - analysis of whether the Faroe Islands should ratify the Charter or not", ið viðger Evropiska Almannaskjalið, ið kom í gildi í 1961, sum Danmark staðfesti í 1965, men framvegis ikki er sett í glidi fyri Føroyar. Innihaldið í greinunum spennir á ein hátt víða, hóast báðar greinar siga ikki so lítið um serstøku stjórnarskipanarligu støðu Føroya.

Góðar grundir kunnu vera til tess, tí vit eru í eini tíð við góðum líkindum at hugsa stórt og grundleggjandi. Lestur í lóg er nú aftur, hóast í smáum, tikin upp á Fróðskaparsetri Føroya, og uppaftur størri ætlanir eru um at gróðrarfestast við spildurnýggju avtaluni millum Fróðskaparsetrið og Háskóla Íslands, Lagadeild, í Reykjavík um samstarv um at menna føroyskan løgfrøðilestur.

Samtykt er at skipa føroyskt løgmálaráð á fyrsta sinni til tess at taka yvir rættarskipanina í Føroyum og leggja lunnar undir eini føroyskari umsiting av rætti føroyinga. Tróndur og Sigmundur livdu væl hesum fyriuttan, tó ikki báðir líka leingi. Nýggja Løgmálaráðið fer nú undir at fyrireika, at familjurættur, myndugleikin at geva arbeiðs- og uppihaldsloyvi, fjølmiðlaábyrgdarlógin, umsitingin av tinglýsingini, løgreglan, ákæruvaldið og dómstólarnir koma undir føroyskan myndugleika. Óráð eru helst at spáa um, hvussu nógv hesum, ið kemur undir føroyskan myndugleika í hesum

valskeiði, men skjøtil verður í øllum førum settur á. Um onkur freistast, kann verða skoytt uppí her, at starvið sum aðalstjóri í Løgmálaráðnum er lýst leyst at søkja.

Eitt stórt tak verður at skapa okkum eina føroyska grundlóg, ella stjórnarskipan, eitt starv, ið varð byrjað fyri trimum árum síðani, og sum samtykt er at halda fram við. Alt ovurstórar uppgávur, og kunnu vit taka undir við Sjúrði í Sniálvstátti, tá ið kvøðið verður:

Sjúrður gekk frá strondum niðan,
hugsar um tann vanda,
hvussu hann skuldi ráðini leggja,
so ikki skal ilt av standa.

Lógarritið er náttúrligur partur í allari hesari menning. Her er rúm fyri viðger og kjaki, nú landið skal byggja lóg og øvugt.

Til tess at geva Lógarritinum eitt livandi og kveikjandi innihald, vil ritstjórnin gera vart við, at fleiri sløg av teksti verða tikin við. Higartil hevur mestsum einans tann vísindakenda 'greinin' verið at sæð. Slík grein er heldur drúgvari, kanska 10, 20, uppí 30 síður til longdar, og ávísingar eru til bókmentir um evnið, skrivað verður um. Afturat hesum eru fólk vælkomin at skriva 'greinastubba', ið helst er um 4-5 síður til longdar, við linligari krøvum til gjølliga greining og bókmentaávísing. At enda, men ikki týdningarminni, er eisini pláss fyri 'viðmerkingini', ið sum orðið sigur, er stutt, kanska 1-3 síður, og sum eitt nú viðger eitthvørt, sum hevur staðið í Lógarritinum, ella sum ber fram sjónarmið um okkurt, sum rørir seg í samfelagnum. Upptøka í ritið fæst við at venda sær til onkran av okkum í ritstjórnini. Alt innkomið tilfar verður gjøgnumlisið við tí fyri eyga at uppihalda ávísa dygd í ritinum, sum vanligt er við slíkum. Við hesum er drunnurin sendur víðari, og nú er ikki at halda seg aftur, um tú hevur hug at skriva í ritið.

Sigmundur Ísfeld, editor-in-chief

Law Shall Build the Land

This fourth edition of the Faroese Law Review contains two articles which in different ways treat some quite important aspects of Faroese Law. Kári á Rógvi discusses the financial powers of the state – in particular those of the Faroese 'semi-state' – as they relate to law, not least contitutional law. Kári á Rógvi's article is based on a paper he prepared for the Faroese Constitutional Commission, a forum commissioned by the last Government to elaborate a proposal for a Constitution for the Faroe Islands. The article, by Birita Ludvígsdóttir Poulsen, analyses the reasons why the European Social Charter has not yet been ratified by the Faroese authorities, despite continuing pressure from the Danish Government. Birita L. Poulsen's article is based on her dissertation for a Master degree in International Law at the University of Southampton.

In judicial and constitutional terms, the Faroes are an interesting place to be these days. The University of the Faroe Islands in Tórshavn is gradually establishing, or rather reestablishing, a course in Law – generously supported by good friends at the University of Iceland Law Department in Reykjavík, with whom the Faroese university has recently contracted an agreement oncooperation and support.

Another significant development is the new Faroese Government's (formed in June this year) decision to establish a Faroese Ministry of Justice. Until now the Government's Legal Department was only a section of the Faroese Prime Minister's Office. The Legal Department has been growing, and will later this year be formed officially as a ministry in its own right, headed by

the Minister of Justice, Høgni Hoydal, who is also Deputy Prime Minister in the Faroese Cabinet. The main reason for this new ministry is that the Faroese Government is now negotiating with the Danish Government for the transfer of the police force and the legal system, including the courts, from Danish to Faroese authority.

As if the above mentioned weren't enough, the Faroese people can now look forward to a brand new constitution for their nation. Originally a Constitutional Commission was formed in 1999. It started the process, and managed to dig deep in various complicated fields, but wasn't able to finish the job before the general election in April this year. A reborn Contitutional Commission will now continue this immensely important task.

In the midst of these innovative and challenging developments, we, the editors, though not overestimating the power of learned argumentation, see the Faroese Law Review as a natural part of the important process of constructing a Faroese legal system, for as the age-old expression goes – *við lógum byggja land*, Law Shall Build the Land and vice versa. We therefore invite anybody with views on any of these vast topics to share them by contributing to our humble journal. We invite ARTICLES, presented in standard scholarly form. We also welcome shorter contributions in the form of NOTES of 4-5 pages, which may be less comprehensive with respect to scholarly treatment and use of references. We also invite submission of LETTERS of under 3 pages, such as comments on earlier contibutions in this journal, or on other developments of interest in the general area of Law and Government. We welcome all good material in English, any Scandinavian language, and of course Faroese.

At halda FLR

Ætlanin hjá ritstjórnini fyri 2002 er, um umstøðurnar verða til tess, at geva út 3 rit, og sum áður fráboðað verður kostnaðurin fyri at gerast haldari 300,00 kr. fyri árgangin.

Haldaragjaldið kann gjaldast á konto í Føroya Banka 6460-162.300.3.

Ritini kunnu eisini keypast í leysasølu fyri 130,00 kr. fyri riti.

Subscriptions to the FLR

This volume of the Faroese Law Review (no. 1, 2 and 3) will cost DKK 300 in subscription, payable to:

Account no. 6460-162.300.3

Bank: P/F FØROYA BANKI

SWIFT Code: FIFB FO TX

Address: Húsagøta 3, P.O. Box 3048. FR-110 Tórshavn

Roknskapur 2001
Rakstrarroknskapur 01.01 - 31.12.2001

Haldaragjald v.m.		kr. 13.284,98	
Studningur		- 60.000,00	kr. 73.284,98
Útreiðslur:			
Prenting blað 1 & 2		kr. 65.418,75	
Skrivstovulutir		- 2.308,00	
Fyrilestrarkvøld			
Útreiðslur	kr. 22.933,25		
Studningur	- 21.333,00	- 1.600,25	kr. 69.327,00
			kr. 3.957,98
Rentir netto			- 58,30
Avlop			**kr. 4.016,28**

Fíggjarstøða 31.12.2001

Føroya Banki		kr.	4.098,60	
Postgiro		-	2.669,68	
Kreditorar				kr. 2.752,00
Eginogn byrjað	kr. 0,00			
Avlop	- 4.016,28			- 4.016,28
		kr.	**6.768,28**	**kr. 6.768,28**

Sp/f Agnar á Dul, Agnar á Dul, skrás. grannskoðari hevur grannskoðað ársroknskapin hjá Føroyskt Lógar Rit fyri 2001, sum ritstjórnin hevur set upp. Grannskoðanin hevur ikki givið orsøk til nakað fyrivarni.

Birita L. Poulsen[1]

Faroese Ratification of the European Social Charter[2]

- An analysis of whether or not the Faroe Islands should ratify the Social Charter.

Føroyskt Útrak
Heiti: Føroysk staðfesting av Europeiska Sosiala Skjalinum – ein greinan av, um Føroyar skulu staðfesta Sosiala Skjalið. Endmálið við greinini er at kanna, um Føroyar skulu taka undir við Europeiska Sosiala Skjalinum ella ikki, og um tær so gera, hvørjar partar av Skjalinum Føroyar skulu staðfesta. Føroyar kunnu bæði staðfesta upprunaskjalið frá 1961 og

---

[1] Lógkøn, cand. jur. frá København, LL.M. frá Southampton. Ráðgevi í Almannamálaráðnum.

[2] This article is based on a disseration written and accepted as part of the author's Master of Laws programme in International Law at the University of Southampton. The author wishes to thank the following for help, materials and interviews: Mr. Henrik Christensen and Mr. Stefano Piedimonte, administrators at the Secretariat of the European Social Charter, Strassbourg, Mrs. Karin Møller Larsen, civil servant in the Minstry of Social Affairs, Denmark, Mr. Ernst Jacobsen, Head of Department at the Public Unemployment Services, the Faroe Islands, Mrs. Súsanna Nolsøe, civil servant at the Ministry of Health- and Social Affairs, the Faroe Islands, Joen H. Andreasen, then President of the Court of First Instance on the Faroe Islands.

endurskoðaða skjalið frá 1996, og kunnu enntá velja at taka undir við ávísum ásetingum í skjølunum báðum.

Greinin metir, at Føroyar longu halda øll stykkini í fyrstu grein, grein 6, stykkini 1, 2 og 3. Grein 12, stykkini 1, 2 og 3, og grein 12, stykkini 2 og 3. Harímóti eru fleiri ásetingar, ið kunnu sigast ikki at halda, sum er. Hesar ásetingar fevna um fleiri ymisk øki innan arbeiðsmarknað, heilsuverk og almannaverk.

Høvundin vísir tí á, at tað ikki verður uttan trupulleikar, at Føroyar taka undir við Sosiala Skjalinum. Men hóast føroysk staðfesting hevði ført við sær øktar byrðir, bæði tá ræður um at smíða lógir og at fyrisita, so er tað spell, at Skjalið ikki er sett í verk í Føroyum. Tí føroysk staðfesting hevði styrkt sosialu rættindini hjá fólki í Føroyum, tryggja áhugan hjá almennum stovnum fyri sosialum rættindum, og gjørt, at vit fingu bæði hjálp og ábreiðslur frá Europaráðnum.

Føroingar áttu tí at tikið støðu til, hvørjar ásetingar vit longu lúka, og hvørjar vit vilja taka á okkum í næstum, og staðfesta hesar.

English Summary
The purpose of this article is to find out whether the Faroe Islands should ratify the European Social Charter or not and, if so, to which extent the Faroe Islands should ratify the Charter, that is which articles of the Charter should be ratified and whether the Faroe Islands should ratify the original Charter of 1961 or the Revised Charter of 1996.

The Faroe Islands can be expected to be in compliance with all three paragraphs of article 1 of the Charter, Article 6 paragraph 1, 2 and 3, Article 12 paragraph 1, 2 and 3 and Article 13 paragraph 2 and 3.

On the other hand, the Faroe Islands may not be in compliance with article 5 and article 6 paragraph 4 because of the fact that certain kinds of civil servants are not allowed to strike. Concerning article 6 paragraph 4 there could also be a problem concerning the cooling-off periods that are required in regard to collective action. Similarly, there could be a problem concerning Article 12 paragraph 4 concerning equal treatment for the nationals of other Contracting Parties with respect to social security and Article 13 paragraph 1 concerning the 6 weeks waiting period before citizen from other member states of the Charter can get treatment from the Faroese health system and paragraph 4 concerning equal treatment of citizen of the

member states in regard to social and medical assistance. Finally, it is doubtful whether the Faroe Islands are in compliance with Article 16 of the Charter concerning family benefits, kindergarten places for children, housing policy.

From the above mentioned it can be concluded that it will not be without difficulty for the Faroe Islands to ratify the European Social Charter. However, even if the Faroe Islands would be in breach of many of the key Articles and ratification would mean a larger workload for the Faroese administration, it can be said to be regrettable if the Faroe Islands did not ratify the Charter at all, as it contains many advantages. If the Faroe Islands ratifies the Charter, it would strengthen social rights on the Islands. It would be possible to a greater extent to focus the minds of the Parliament and Executive on social rights of the citizens. The authorities would have to consider social rights and improve the legislation and practice concerning these rights, or else they would receive recommendations from the Committee of Ministers, which would reflect badly on the Faroe Islands. To ratify the Charter could give the Faroe Islands more credibility and respect in the international society, as the other member states of the Council of Europe would know that the Faroe Islands are a developed welfare society complying with many of the key articles of the Charter.

It can be concluded that it is advisable that the Faroe Islands ratify the Articles of the original Charter, which the Islands are in compliance with. If Denmark subsequently ratifies the revised Charter, the Faroe Islands could ratify the corresponding Articles in the revised Charter, although, the collective complaints procedure, should first be ratified when the time is ready for it.

1. Introduction

The European Social Charter entered into force in 1961 and was ratified by Denmark in 1965. However, the Charter has not been ratified on the Faroe Islands yet, despite continuing pressure from the Danish Government. The reason why the Faroese Government has not wanted to ratify the Charter is that it wants to know what consequences ratification would have for the Faroe Islands. Because of the limited resources of the Faroese Government, this examination has not yet been done. [3]

[3] Already, the Faroe Islands are part of similar Conventions on Social Rights. The most important are: the UN International Covenant on Economic, Social and Cultural Rights, the

The purpose of this article was to find out whether the Faroe Islands should ratify the European Social Charter or not and in case ratification, to which extent the Faroe Islands should ratify the Charter, that is which articles of the Charter should be ratified and whether the Faroe Islands should ratify the original Charter of 1961 or the Revised Charter of 1996.

Firstly, there will be a short introduction to the European Social Charter. Secondly, there will be a short chapter concerning signature and ratification of international treaties. In this chapter special emphasis will be put on the Faroese position regarding the ratification of international treaties.

Thirdly, it will be examined whether the Faroe Islands are in compliance with the key provisions of the Charter of 1961 and the revised Charter of 1996. The compliance will be compared to the Danish compliance. Particular concerns concerning the supervisory mechanisms of the original and the revised Charter will be examined and discussed. This examination will lead to the conclusion whether the Faroe Islands should ratify the Charter or not.

Because of the article topic, it has been difficult to find relevant literature and materials on the subject. Therefore, the work is partly based on analysis of texts and partly based on an empirical research of legislation and practice on the Faroe Islands.

1.1. The European Social Charter

1.1.1. Background

The European Social Charter was opened to signature in 1961 and entered into force in 1965. The Charter protects a series of fundamental social and economic rights, and together with the European Convention on Human Rights, which protects civil and political rights, the Charter is the most important instrument of the Council of Europe.[4]

European Code on Social Security and the European Convention on Social and Medical Assistance from the European Council and the Nordic Convention on Social Security.

[4] A.H. Robertson and J.G. Merrils, Human Rights in the World 4th edition, 1996, pp. 169-170. The reason why the Council of Europe chose to formulate two basic instruments was that the nature of economic/social rights and human rights was considered to be very different from the nature of human rights. Human rights are concrete rights. In most European Countries, citizen can appeal against a breach of a human right to the national courts. This is not the case with economic and social rights. Implementing these rights depends on the general economic situation in a country. If someone is unable to find a job or lacks a decent standard of living, it is not possible for him to bring a claim against the Government concerning the matter to the

The Council of Europe was founded in 1949. The purpose of the organisation was to unite Europe with a set of common values with the intention of avoiding another world war. Today, the organisation consists of 41 member states. The Council of Europe is not to be confused with the European Union. They are two separate systems.[5] The Council of Europe is situated in Strasbourg, France. The main organs are the Committee of Ministers and the Parliamentary Assembly. These two organs are served by the Secretariat, which also serves the European Commission and the Court of Human Rights.[6] The European Union organs are situated in Belgium and are composed of the European Parliament, the Council of Ministers, the Commission and the Court of Justice, which unlike the other organs, is situated in Luxembourg.[7] The Council of Europe and the European Union are co-operating in many areas, including social policy, but they operate independently from each other.[8]

1.1.2. The rights protected

The original European Social Charter of 1961 guarantees fundamental rights related to housing, health, education, employment, social protection and non-discrimination.

The key provisions of the Charter are the right to work, the right to organise, the right to bargain collectively, the right to social security, the right to social and medical assistance, the right of the family to social, legal and economic protection and the right of migrant workers and their families to protection and assistance.[9]

The European Social Charter has been supplemented by three protocols, namely the additional protocols of 5 May 1988, 21 October 1991 and 9 November 1995.

---

court. The rights depend more upon economic prosperity than upon legislation. Apart from this, the differences in social and economic conditions in the European countries made it difficult for the European countries to agree upon setting a common standard on the area. Therefore, the Council of Europe decided to formulate two basic instruments. The rights set forth in the European Convention on Human Rights are to a larger extent formulated as compulsory rights, whereas the rights set forth in the European Social Charter are more vaguely worded.

[5] By some the two systems are referred to as the Europe of 41 members (Council of Europe) and the Europe of 12 members (EU).

[6] Council of Europe, European co-operation on social and family policy, 1992, p. 1.

[7] Council of Europe, European co-operation on social and family policy, 1992, pp. 8-9.

[8] Council of Europe, European co-operation on social and family policy, 1992, p. 16.

[9] A.H. Robertson and J.G. Merrils, Human Rights in the World 4th edition, 1996, p. 171. The number of the key articles mentioned above is repectively: article 1, 5, 6, 12, 13, 16 and 19.

The 1988 Protocol, which came into force in 1992, guarantees four groups of new rights. These are the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on grounds of sex, the right to information and consultation, the right to take part in the determination and improvement of their working conditions and working environment and the right of elderly persons to social protection.[10]

The 1991 Protocol revised the supervisory system and the 1995 Protocol provides for a system of collective complaints.[11] The latter Protocol came into force in 1998.

Apart from the above mentioned amendments, a revised European Social Charter opened for signature in 1996 and came into force in 1999. The revised Charter will in time replace the original Charter which dates from 1961.

The revised Charter combines the rights set forth in the 1961 Charter and the three Additional Protocols. Furthermore, a number of new amendments were made to the original Charter provisions.[12]

The key provisions of the revised Social Charter, apart from the above mentioned rights set forth in the original Social Charter and the Additional Protocols, are the right of children and young persons to protection and the right to equal opportunities and equal treatment in matters of employment and occupation without discrimination on the grounds of sex.[13]

2. Signature and Ratification

2.1. In general

The entry into force of a treaty depends on its signature and ratification. A signature does not establish a consent to be bound by the treaty. The signature is a political statement, which qualifies the signatory states to proceed to ratification and creates an obligation of good faith to refrain from acts which could frustrate the objects of the treaty.[14]

[10] Council of Europe, European Social Charter: Collected texts (2nd edition), 2000, pp. 33-40.
[11] Council of Europe, European Social Charter: Collected texts (2nd edition), 2000, pp. 41-49.
[12] Council of Europe, European Social Charter: Short Guide, 2000, p. 25.
[13] Council of Europe, European Social Charter: Short Guide, 2000, p. 218.
[14] Ian Brownlie, Principles of Public International Law, 5th edition, 1998, p. 610.

Ratification itself involves two procedural Acts. The first is the presentation of the treaty to the appropriate organ of the state, which is usually the Parliament. Normally, a bill of ratification is presented to parliament after approval from the Government. The second is the formal exchange or deposit of the instrument of ratification, which brings the treaty into force. Ratification in the latter sense involves the consent to be bound by the treaty.[15] A treaty can also enter into force by accession, acceptance or approval. This can occur when a state, which did not sign a treaty formally, accepts its provisions.[16]

When ratifying a treaty, the state has to make a declaration specifying the scope of the obligations it accepts. Furthermore, the state has the possibility of making reservations to the treaty. A reservation is a statement made by a state, whereby it purports to exclude or to modify the legal effect of certain provisions of the treaty in the application to the state.[17]

2.2. Signature and ratification of the Social Charter

The Social Charter has been ratified by 28 of the 41 countries of the Council of Europe, including all the member states of the EU. The other Contracting Parties are Cyprus, Bulgaria, Czech Republic, Hungary, Estonia, Romania, Slovenia, Iceland, Malta, Norway, Poland, Slovakia and Turkey. Over half of the ratifications have been made after 1980.[18] The other states have announced that they intend to sign or ratify the Charter in the near future. New member states of the Social Charter have the choice of which instrument to ratify, the 1961 Social Charter and possibly some of the protocols or the 1996 revised Charter.[19]

When depositing their instrument of ratification, a state must declare which provisions of the Charter it accepts. States can extend the application of the Charter to certain parts of their territory and include other persons than those covered by the Appendix. States can also declare that collective complaints can be lodged against them and declare that any additional Articles or numbered paragraphs will be accepted.[20]

---

[15] Ian Brownlie, Principles of Public International Law, 5th edition, 1998, p. 611.
[16] Ian Brownlie, Principles of Public International Law, 5th edition, 1998, p. 612.
[17] Ian Brownlie, Principles of Public International Law, 5th edition, 1998, pp. 612-15.
[18] Council of Europe, Signatures and ratifications of the Charter, its Protocols and the revised Charter, situation at 1st June 2001.
[19] Council of Europe, European Social Charter: Short Guide, 2000, p. 81.
[20] Council of Europe, European Social Charter: Short Guide, 2000, p. 89.

States can make reservations to the Charter. However, they must accept at least five of the seven key Articles[21] and a number of supplementary Articles or numbered paragraphs. The total number of Articles or numbered paragraphs, by which a state is bound, can not be less than 10 Articles and 45 numbered paragraphs.[22] Moreover, the Contracting Parties have to consider Part I of the Charter as a declaration of the aims which they will follow by all appropriate means.[23]

According to art. 35 of the 1961 Charter, the treaty comes into force as from the thirtieth day after the date of deposit of its instrument of ratification or approval. According to art. K of the revised Charter, the treaty enters into force on the first day of the month following expiry of a period of one month after the date of deposit of the instrument of ratification, acceptance or approval.

2.3. Denmark's ratification of the Social Charter

Denmark signed the European Social Charter in 1961 and ratified it in 1965 and the Additional Protocol of 1988 was signed and ratified in 1996. The other instruments are not ratified, but Denmark signed the Collective Complaints Protocol and the revised Social Charter in the years they were created, namely respectively in 1995 and 1996.[24]

Denmark has only accepted 45 of the Charter Articles, including 6 of the 7 key Articles to the Charter. This can be said to be a very low level of acceptance. Most of the other Contracting Parties have a higher level of acceptance than Denmark. Some of the Countries have accepted all the Articles of the Charter, these being Belgium, France, Italy, Netherlands and Portugal. Only Cyprus, Iceland and Hungary have a lower level of acceptance than Denmark, accepting respectively 43, 41 and 33 Articles. However, Denmark's level of acceptance is increased by the fact that Denmark has ratified the Additional Protocol of 1988.[25]

Apart from having one of the lowest levels of acceptance, Denmark is in breach of many of the Charter provisions. The European Committee of

[21] Namely art. 1, 5, 6, 12, 13, 16 and 19.

[22] Council of Europe, European Social Charter: Collected texts (2nd edition), 2000, p.24; art. 20 of the European Social Charter, 1961.

[23] Article 20 paragraph 1 of the European Social Charter.

[24] Council of Europe, Signatures and ratification of the Charter, its Protocols and the revised Charter, Situation at 1st of June 2001.

[25] K.D. Ewing, European Human Rights Law Review, Article: "Social Rights and Human Rights: Britain and the Social Charter – The Conservative Legacy", 2000, p. 3.

Social Rights has concluded that Denmark is not fully complying with the following Articles 1 paragraph 2, Article 5, Article 6 paragraph 2 and 4, Article 12 paragraph 4, Article 13 paragraph 1 and Article 16.[26] The Articles which Denmark does not comply with are all key Articles of the Charter.

Apart from this the Committee has deferred its conclusion with regard to the Articles 6 paragraph 3, Article 13 paragraph 3 and Articles 1, 2, 3 and 4 of the Additional Protocol.[27]

However, it can be said that although Denmark is quantitatively in breach of many key provisions, it does not mean that Denmark qualitatively breaches the Charter to a large extent. In other words, even if Denmark is in non-compliance with many Charter Articles, this does not mean that Denmark breaches the Charter in matter of substance and in terms of breadth or depth.[28] This aspect will be further examined in chapter 3 of this article.

2.4. External and Internal Affairs of the Faroe Islands influencing Ratification

The European Social Charter has not yet been ratified on the Faroe Islands. Denmark has made an exception concerning the territorial scope of the Charter and has excluded the Faroe Islands and Greenland[29] from the scope of the Charter.

2.4.1. The Faroese Home Rule[30]

The Faroe Islands are a part of the Kingdom of Denmark. In ancient times the Faroes were independent, but came under Norwegian supremacy in the early middle ages. Through the Union of Norway and Denmark, the Faroes then came under Danish control. Following the Second World War II, when the Faroes under friendly British occupation created an Emergency Constitution in an accord with the Danish Governor, and a referendum in 1946 favouring secession from Denmark, the Faroe Islands struck a deal with Denmark, gaining more autonomy from the Danish realm and a

[26] Council of Europe, European Social Charter, European Committee of Social Rights, Conclusions XV-1, Vol. 2, 2000, p. 672.
[27] Council of Europe, European Social Charter, European Committee of Social Rights, Conclusions XV-1, Vol. 2, 2000, p. 672.
[28] K.D. Ewing, European Human Rights Law Review, Article: "Social Rights and Human Rights: Britain and the Social Charter – The Conservative Legacy", 2000, p. 3.
[29] Greenland is, similar to the Faroe Islands, a part of the Danish Kingdom. The island has autonomy from Denmark and has the same type of home rule as the Faroe Islands.
[30] A short explanation of the Faroese Home Rule is necessary for the understanding of the examination of the Faroese legislation and practice in chapter 3 and 4 in the article.

framework for gradually transferring control over various policy areas to the Faroese Government. This was established in the Faroese Home Rule Act.[31] The Act states that the Faroe Islands are a self-governing territory within the Danish Kingdom. The Faroese Parliament and Executive, which in the Act are referred to as the "Home Rule Authorities", have the legislative and executive powers over transferred powers or policy areas, called Special Matters in the Act.[32] If the Faroese Home Rule should be compared to an other system, it can be said that it is something akin to the constitutional position of the Isle of Man or that of the two island countries attached to the Kingdom of the Netherlands, Aruba and the Netherlands Antilles.

The Home Rule Act divides all policy areas into two main groups, Special Matters, controlled exclusively by the Faroese themselves, and Common Matters, controlled jointly by the Faroese and the Danes. The Act then divides the different Common Matters into two main sections: section A and section B. The matters in section A can be taken over by the Faroese Government at request, whereas the matters in section B can be taken over after further negotiations between the Faroese and the Danish Governments.

A third group of Common Matters exists, not explicitly mentioned by the Home Rule Act, among others the Danish Constitution, the Judiciary and foreign affairs.

On the one hand, the Faroese are obliged to respect this state of affairs. The Home Rule Act explicitly states that the Faroese Government cannot violate Denmark's international obligations, and the Danish Judiciary has the implied Judicial Powers over all Faroese matters, common as well as special policy areas. On the other hand, however, the Danish Government is obliged to submit all statutes and treaties proposed to be promulgated on the Faroes Islands and be applicable there for Faroese consideration, in practice giving the Faroese Government veto powers over new treaty provisions becoming applicable to the Faroe Islands, as well as effectively allowing the Faroese to conduct international negotiations within the scope of the Special Matters.

---

[31] The Faroese version is the Lov om Færøernes Hjemmestyre, Færø Amts Kundgørelse Nr. 11 af 31.03.1948 af lov om Færøernes Hjemmestyre, and the Danish version is Lov om Færøernes Hjemmestyre nr. 137 af 23.03.1948. The Faroese version has parallel Danish and Faroese versions, whereas the Danish one is only in Danish. The two versions differ slightly, for instance the Faroese version explcitly uses the Faroese equivalent of 'Nation', whereas the Danish version uses a more ambiguous phrase 'community of people'.

[32] Lov om Færøernes Hjemmestyre, Færø Amts Kundgørelse Nr. 11 af 31.03.1948 af lov om Færøernes Hjemmestyre, (The Faroese Home Rule Act of 1948), § 1.

2.4.2. Ratification

The usual procedure for ratification of treaties relevant to the Islands is as follows. Firstly, a treaty is signed by Denmark. Subsequently, the Danish Government has to prepare a bill of ratification to be presented to the Danish Parliament. When the Danish authorities intend to ratify a treaty, they are obliged to question whether the Faroese Home Rule authority wishes to be part of the treaty or not.[33] If the Faroese Government wishes to become part of the treaty, it prepares a bill of ratification to be represented to the Faroese Parliament.

The Faroese Government informs the Danish authorities of the result. The result is not presented to the Danish Parliament, but the Danish Government has to respect the Faroese result. Thus, if the Faroese Home Rule authorities have rejected the bill of ratification, Denmark, when ratifying the treaty, usually excludes the Faroe Islands from the scope of the treaty. However, this is only possible when reservations can be made to the treaty. A duty on the part of Denmark to have such provisions included must be implied if the Faroese right to reject the treaty is to be effective.

2.4.3. The territorial scope of the Social Charter

According to the European Social Charter, Denmark may, at any time after the ratification of the Charter, declare by notification to the Secretary General of the Council of Europe, that the Charter shall extend in whole or in part to the Faroe Islands. Furthermore, Denmark shall specify which Articles or paragraphs of Part II of the Charter it accepts as binding in respect of the territories named in the declaration. [34]

It can be argued, that this Article permits two matters. Firstly, it entitles the Faroe Islands to say yes or no to be bound by the Charter as a whole. Secondly, it entitles the Faroe Islands to chose to be bound by different provisions than Denmark, when wishing to become a part of the Charter. Subsequently, the Faroe Islands can ratify provisions not even ratified by Denmark.

Another aspect of the territorial scope is, that when Denmark ratifies the Charter, it has to ratify at least 5 of the 7 provisions of Part II of the Charter and apart from this, at least 10 Articles or 45 numbered paragraphs in the Charter as a whole.[35]

---

[33] The Faroese Home Rule Act of 1948, § 7.
[34] Article 34 paragraph 2 of the European Social Charter, 1961.
[35] Article 20 paragraph 1 of the European Social Charter, 1961.

It can be argued, that as the Faroe Islands ratify the Charter as a part of Denmark, the territory does not have to ratify the Charter on the same conditions as Denmark. Considering that Denmark has already fulfilled the requirement by ratifying 45 Charter provisions, it can be held that the Faroe Islands are not bound by this requirement at all and that the Island therefore can ratify the provisions they choose.

Netherlands' ratification of the Charter supports the above interpretation. The Netherlands have ratified the original Social Charter as well as the Additional Protocols from respectively 1988 and 1991. However, with respect to the Netherlands' Antilles and Aruba, the Kingdom of Netherlands has only accepted Articles 1, 5, 6 and 16 of the original Charter and Article 1 of the Additional Protocol of 1988.[36]

Therefore, it can be concluded that the Faroe Islands can ratify the Charter provisions that they wish to be bound by, meaning that if the Islands wish to ratify only 3 Charter provisions, the Islands are free to do so.

Having said this, it can not be held that the Faroe Islands can ratify the two Additional Protocols from 1991 and 1995 and the revised Social Charter, if Denmark does not ratify the instruments. Article L paragraph 2 of the revised Social Charter states that Contracting Parties may at the time of signature or of the deposit of the instrument of ratification, acceptance or approval, or at any time thereafter, declare that the Charter shall extend to one of its territories.

It can be argued, that according to the wording of this Article, Denmark could have declared that the revised Charter should extend to the Faroe Islands when it signed the revised Charter in 1996 or any time thereafter, meaning that the Faroe Islands could ratify the revised Charter even if Denmark had not ratified it.

On the other hand, it can be debated that it would be illogical to interpret the above Article in this way. Hence, the natural meaning of the Article would rather be that when Denmark signs the revised Charter it can declare that the Charter provisions should extend to the Faroe Islands, meaning that neither Denmark nor the Faroe Islands would be bound by the revised Charter by this date. Denmark would firstly be bound by the revised Charter, when the

[36] Council of Europe, European Social Charter, the European Committee of Social Rights, Conclusions XV-1, Vol.2, 2000, p. 687.

country had ratified it. The Faroe Islands could either at the time of the deposit of the instrument of ratification or at any time thereafter ratify the instrument.

2.4.4. Entry into force and denunciation

The treaty enters into force in the Faroe Islands according to the conditions set forth in the particular treaty. The date of deposit of the instrument of ratification is the date when Denmark announces to the appropriate international organisation that the Danish territory of the Faroe Islands have ratified the treaty. Apart from this, Faroese as well as Danish law require the treaty to be promulgated by the Danish Government in official Faroese statute publication, before entry into force.[37]

According to the European Social Charter the Charter shall extend to the Faroe Islands as from the thirtieth day after the date on which the Secretary General of the Council of Europe has received notification of a declaration from Denmark declaring that the Faroe Islands wish to become a part of the Charter.[38]

If the Faroese Government regrets that it has ratified a particular Article of the Charter, it is possible for this territory of the Danish Kingdom to denunciate the Article or the Charter as a whole.[39]

2.4.5. The effect of international treaties

As mentioned above, the Faroese Home Rule Act states that the Danish Government has the formal powers to act vis-à-vis foreign Governments when it comes to foreign affairs. Furthermore, it is pointed out that the Home Rule authorities are limited by the international responsibilities and rights that are binding for the Islands, or in the original Faroese language: "Føroyska heimaræðið er avmarkað av teimum til eina og hvørja tíð verandi sáttmálaligu og øðrum internationalum rættindum og skyldum."[40]

The interpretation of this provision has differed considerably. The provision has been interpreted to mean that when an international treaty has entered into force in the Faroe Islands, it has direct effect. However, the most common interpretation has been that the provision has to be seen as a

[37] Løgtingslóg nr. 109 frá 17 December 1987 um Alment Kunngerðarblað, við seinni broytingum.
[38] Article 34 paragraph 3 of the European Social Charter, 1961.
[39] Article 37 paragraph 3 of the European Social Charter, 1961.
[40] The Faroese Home Rule Act of 1948, § 5.

limitation of the Home Rule's legislative authority, so that the Home Rule does not have authority to legislate in a way that is contradictory to binding international treaties.[41]

Consequently, Faroese laws have not been seen as invalid, if they have not corresponded with a treaty. It can be said that a more flexible approach has been adopted, which is that such Faroese laws should be corrected as soon as possible.

However, the Faroese Internal Constitutional Act from 1994 states that a Faroese law is invalid, if it contradicts international treaties, which are binding for the Faroe Islands.[42] In the "traveaux preparatoires" of the law it is expressed that the intention of this provision is not to say that international treaties should have direct effect on the Faroe Islands, meaning that citizens of the Islands can directly claim to have the rights set forth in a treaty. Yet, when a law is invalid, because in contradicts an international treaty, the legal status has to be that no law governs the area.[43]

Although, the 1994 Internal Constitution has been enacted by two consecutive Parliaments, this provisions seems not to have been applied according to its literal meaning in practice. The Faroese Court of First Instance does not consider whether Faroese laws are contrary to international treaties when giving its judgement. Treaty provisions are only used directly if they are implemented in Faroese law. Interestingly, Faroese lawyers do not claim that a law is invalid because it contradicts a treaty provision.[44]

This leaves the status of international treaties on the Faroe Islands rather unclear. According to the wording of the Faroese laws, it could be held that international treaties have direct effect. However, the practice of the laws on the Islands reveals that international treaties do not have direct effect.

The difficulty mentioned above will not constitute a problem concerning the European Social Charter in cases where national laws offer more favourable

[41] Fiskimálastýrið, Frágreiðing um yvirtøku av skipaeftirlitinum "Trygd á sjónum", 2000, p. 70 (Maritime Safety Committee White Paper).
[42] Løgtingslóg nr. 103 frá 26. Juli 1994 um stýrisskipan Føroya, § 55 (The Faroese Constitutional Procedural Act § 55).
[43] Álit um Stýrisskipanarviðurskifti Føroya, 1994, p. 79 ("Traveaux preparatoires" concerning the Faroese Constitutional Procedural Law, 1994, p. 79).
[44] Interview with the then President of the Court of First Instance on the Faroe Islands: Joen Henry Andreasen, April 2001.

treatment to the persons protected. In these cases the Charter clarifies, that the provisions of the Charter shall not prejudice the provisions of domestic law.[45] However, the problem still remains concerning national laws which do not offer a more favourable treatment to the persons protected in the Charter.

Because of the limited space allowed for this article, this subject will not be further discussed. Still, these special circumstances have to be had in mind, when assessing whether or not the Islands should ratify the European Social Charter.

3. Compliance with the 1961 Charter

In this Chapter it will be examined whether the Faroe Islands comply with the provisions laid down in the original European Social Charter of 1961. Because of the limited space for this article, only the compliance with the key provisions of the Charter will be examined. These are the right to work, the right to organise and collectively bargain, the right to social and medical assistance.

As Denmark has made a reservation for one of the key Articles of the Charter, Article 19 concerning migrant workers and their families, this Article will not be discussed in this chapter.

To assess more definitely whether the Faroe Islands should become part of the European Charter or not, an examination has to be made of all the Articles in the Charter, as well as the Articles in the Additional Protocol of 1988 already ratified by Denmark. It could be recommended that the Faroese Government produced this research before ratification of the Charter.

The Faroese compliance will be compared to the Danish compliance with the Charter. This seems the most reasonable approach, as the Faroe Islands are constitutionally a part of Denmark. After all, it is the Danish Government which has to bring the final Faroese ratification to the Council of Europe and which has to defend the Islands' future failures to comply with the Charter.

Some parts of Danish legislation are binding for the Faroe Islands. Of importance could be mentioned the Danish Constitution and legislation

[45] Article 32 of the European Social Charter, 1961.

concerning the Judiciary. However, even though the Faroe Islands are a part of Denmark, the legislation and practice of the two territories differs a lot. Consequently, it has been necessary for the purpose of this article to produce an empirical research of legislation and practise on the Faroe Islands.

First, the supervisory mechanism of the European Social Charter will be examined and discussed for the purpose of discovering the seriousness and important obligations which lay upon the states that ratify the Charter.

3.1. The Supervisory mechanism of the Charter

In order to supervise the implementation of the obligations in the Charter, the member countries have to submit reports to the supervisory mechanism of the Charter.[46] The reports have to be submitted in regular intervals. For the key provisions, which are described above, a report has to be submitted every two years, and for the other provisions, a report has to be submitted every four years.

The European Social Charter is different from other international Conventions in what concerns its supervisory mechanism. The equivalent instrument in the UN system, the ICESCR, similarly establishes a system of international control.[47] However, this system is much less effective than the supervisory system established according to the European Social Charter.

This could be due to the organisation and tasks that have been trusted upon the UN supervisory body. Firstly, it can be said that the reports of the ECOSOC are to be submitted every 5 years, whereas the reports of the European Committee are to be submitted every 2 years. This could suggest that the European countries are better supervised than UN countries.

Moreover, the reports have got to be examined by ECOSOC according to the ICESCR. The tasks conferred on ECOSOC by the above Covenant are extensive. Compared to the 41 countries which the European Committee has to supervise, ECOSOC has to supervise more than 100 Governments, out of which many have very poor welfare standards. It could be believed that it is an impossible task for the body to obtain, receive and analyse reports from all these Governments, thereafter making and transmitting recommendations to the Governments and obtain their comments, and finally report on all this to the General Assembly. Especially when the body

[46] Council of Europe, European Social Charter: Collected texts (2nd edition), 2000, p.25; art. 21 of the European Social Charter, 1961.

[47] Ian Brownlie, Basic Instruments in International law 4th edition, 1995, p. 271.

has limited resources to fulfil its duties. Therefore, the effectiveness of this system could be doubted.[48]

The supervisory mechanism of the European Social Charter has on the contrary had very good results to date. Firstly, the organisation of the supervisory mechanism needs to be explained. The organs involved in the supervision procedure are the European Committee of Social Rights,[49] the Governmental Committee and the Committee of Ministers.[50] The European Committee of Social Rights adopts conclusions, which can be divided into three categories: positive conclusions, deferred conclusions and negative conclusions. A positive conclusion reports compliance with the Charter, a deferred conclusion occurs when the Committee does not have the information required to make an assessment of compliance. A negative conclusion means that the situation in the state concerned is not in conformity with the Charter.[51]

In the event of a negative conclusion, the Governmental Committee may then give warnings to states which fail to conform to the Charter or which fail to supply the information needed.[52] If a state does not remedy a negative conclusion, the Committee of Ministers can decide, on proposal from the Governmental Committee, to send a recommendation to the state concerned. The recommendations request that the state in question takes appropriate action to remedy the situation.[53]

From the above mentioned it can be seen, that the reports are undergoing a quite thorough and serious examination before a recommendation is given. The Committee has developed a comprehensive case law, which is the Committees interpretation of the Charter text. The Member States have to follow this case law. Furthermore, the recommendations are continuously followed up in future supervision cycles. Many practical results can be cited of where Governments have changed their laws to be in compliance with the Charter. The reporting system makes Governments accountable for their laws and practices and makes them feel obliged to change them in accordance with the Charter.[54]

---

[48] Human Rights in the World, pp. 278-279.
[49] Hereinafter, the European Committee of Social Rights is referred to as "the Committee".
[50] Council of Europe, European Social Charter: Short Guide, 2000, p. 33.
[51] Council of Europe, European Social Charter: Short Guide, 2000, p. 105.
[52] Council of Europe, European Social Charter: Short Guide, 2000, p. 107.
[53] Council of Europe, European Social Charter: Short Guide, 2000, p. 109.
[54] Human Rights in the World, pp. 175-176.

Ratifying the Charter would mean more workload for the Faroese administration. The work of gathering information, questioning relevant Ministries, public institutions and private organisations for the purpose of the reports is time consuming. If the information from the member countries is not thorough enough, the Committee can at any time ask for further information or elaboration on particular matters.[55] Furthermore, it is a requirement that a civil servant from every country is represented in the conferences concerning the European Social Charter, which takes place 3 times a year.[56] This would be both time consuming and expensive for the Faroese Government. However, there is a possibility that the Faroese and the Danish Government could make an agreement concerning this issue, so that Denmark could represent the Faroe Islands at the conferences in Strasbourg. This could solve a part of the administrative problem of ratifying the European Social Charter on the Faroe Islands.

Apart from this, a considerable amount of laws and case law would have to be changed for the Faroe Islands to comply with the European Social Charter and not get too many negative conclusions from the Committee. This would take time and political will from the Faroese Parliament and Government.

On the other hand, it could be said that the Faroe Islands should welcome the demanding supervisory mechanism, as this would give the Islands a possibility to obtain better economic and social conditions for its citizens.

However, the Faroe Islands are a country with a small economy and tiny administration. Thought has to be given to these aspects as well. The Administration is easily burdened by the smallest tasks, as it has few resources and because of the financial situation, it is not always possible to give the best of conditions to the citizen even if the political will is present.

Below, the legislation and practice on the Faroe Islands concerning the key Articles 1, 5, 6, 12, 13 and 16 will be examined and assessed.

3.2. Article 1 – The right to work

3.2.1. Paragraph 1 – Full employment

Employment situation

The employment situation on the Faroe Islands has changed considerably recently. In 1995 around 3000 people where unemployed, whereas today

[55] Article ?? of the European Social Charter.

[56] Interview with Karen Møller, Danish Ministry of Social Affairs.

only 1000 are unemployed out of a population of 47000 people. Around 60 % of the unemployed do not have more than secondary school education. Of the 40 % who have more then secondary school education, 25 % have a college education. If you take a look at the unemployed, 65 % of them are women. Unemployment does not affect one age group more than another. However, it can be said that unemployment exists mostly in the age groups 20-30 year old and 30-40 year old.[57]

Employment policy
As there is low unemployment on the Faroe Islands, special measures have to be taken to assist those still unemployed to get employment. The public unemployment service has lately launched a programme, where they are having personal interviews with unemployed. In these interviews it is found out which problems the unemployed have and thereafter the unemployed are offered special courses to be better prepared to meet the needs of the labour market.

As regards the total employment policy expenditure, there has been a substantial drop in these expenditures over the past five years. In 1995 the Government used around 8 million Danish kroner in employment expenditures, whereas in 2000 the Government used around 2 million Danish kroner for the same purpose.[58]

The Committee's requirement for compliance with this paragraph is that member states must pursue an economic policy geared to achievement of the goal which is full employment. If the states take measures to fulfil this purpose and enough information of the measures is given to the Committee to assess the situation, it is not thinkable that the Committee will pass negative conclusions concerning this paragraph.[59]

Considering the positive development in the Faroese employment policy and situation as a whole, it can be expected that the Committee will accept the condition as satisfactory and in compliance with the Charter.

3.2.2. Paragraph 2 – The right of the worker to earn his living in an occupation freely entered upon

[57] ALS, Skýrák, blað hjá Arbeiðsloysisskipanini 2000, p. 26-27 (The Magazine of the public employment services on the Faroe Islands, 2000).
[58] Als, Skýrák, blað hjá Arbeiðsloysisskipanini 2000, p. 26-27 (The Magazine of the public employment services on the Faroe Islands, 2000).
[59] Council of Europe, Short guide, 2000, p. 119.

Elimination of all forms of discrimination in employment
The right to work is guaranteed in § 74 of the Danish Constitution, according to which all restrictions in the free and equal right to employment, which are not motivated in the common good, shall be prohibited by law. To support the common good, every citizen capable of working, should have the possibility to work on conditions, which secure his existence.

In Denmark an Act on prohibition against discrimination on the labour market was enacted by parliament in 1996.[60] No law concerning specific protection based on social or national origin, political opinion, religion, race, colour or age exists on the Faroe Islands. This could lead the Committee to conclude that the Faroe Islands are not in conformity with Article 1 paragraph 2.

However, an Act on equality between men and women was passed through the Faroese Parliament in 1994.[61] The purpose of the Act is to prohibit discrimination of any kind on grounds of sex. It is stated that if an employer wants to employ a man, the employer has to apply for both men and women for all jobs. Women are provided equal opportunities as men concerning education and employment. Women are secured equal wages as men and have the right to maternity leave from their work. All public committees are to be composed in a way that half of the members are men and half of the members are women.

By some, it has been argued that the Act mentioned above leads to discrimination towards men. It can be the case concerning the establishment of many committees, that men have more expertise and knowledge on the subject and therefore would be more competent than women to take seat in the committees. Still, the Act obliges the Government to nominate committee members equally divided between the sexes. On the other hand, it can be said that the Act supports women's possibilities on the labour market and encourages them to take up new challenges to get more knowledge in, for them, unknown areas.

It can be argued that the Faroe Islands do comply with this Article because of the entry into force of the Act mentioned above, but the problem is that

[60] Danish Act on prohibition against discrimination in the labour market of July 1996.
[61] Løgtingslóg nr. 52 frá 3. maj 1994 um javnstøðu millum kvinnur og menn / om ligestilling mellem kvinder og mænd (Faroese Act on prohibition against discrimination in the labour market, 1994.

the discrimination towards other groups, like migrant workers, are not protected in special laws. On the other hand, it can be pleaded that elimination of all forms of discrimination is protected on the Faroe Islands, as it is stated in the Danish Constitution that everyone has a right to free and equal employment.

Furthermore, it can be mentioned that Iceland similarly to the Faroe Islands has only protected the right to equality between men and women, that is a prohibition of discrimination of any kind on grounds of sex. No other legislation protects other groups in the on Iceland against discrimination. Anyway, the Committee has concluded that Iceland is in compliance with Article 1 paragraph 2 of the Charter.[62] Consequently, it can be expected that the Committee will conclude that the Faroe Islands comply with this article.

Prohibition of forced labour
The Danish Criminal Code is valid on the Faroe Islands. Articles 198 and 199 of the Criminal Code[63] lay down penalties for idleness or insufficient means of subsistence for which the persons concerned are held responsible.

The Committee has concluded that Denmark is not in conformity with the Charter as these two Articles are still in force.[64] There is therefore not much doubt that the Committee will conclude similarly concerning the Faroe Islands.

However, it can be argued that the Committee's conclusion is not reasonable, as these two Articles of the Criminal Code are not used in practice on the Faroe Islands. There are no cases on persons being punished for idleness or insufficient means of subsistence.

On the other hand, it can be said that the Faroe Islands have the possibility to amend the Act and repeal the two Articles in question. This could be done by the Faroese Parliament, even if the Danish Parliament did not amend the Act.

---

[62] Council of Europe, European Social Charter, European Committee of Social Rights, Conclusions XV-1, Vol. 1, pp. 322-323.
[63] Lovbekendtgørelse nr. 215 af 24. juni 19391)2): straffeloven, som senest ændret ved kongelig anordning nr. 818 af 3. november 1997 (The Danish Penal Code, 1939, which applies for the Faroe Islands).
[64] Council of Europe, European Social Charter: the Committee of Social Rights, Conclusions XV-1, Vol. 1, 2000, p. 140.

According to the Faroese Act on unemployment benefits[65] all employees who are paying tax on the Faroe Islands and who are between 16 and 67 years old, are obliged to pay 2.25 % of their salary to the public unemployment services. The situation is different for self-employed people. For these people the insurance is not compulsory, they can choose whether or not they will be part of the system. If they are not part of the system, they will not receive benefits in case they become unemployed.

It can be disputed whether the Committee will give a negative conclusion because of the fact that all employees are obliged to pay a certain amount of their wages to the public unemployment services. However, this will probably not be the case in practice, as e.g. the national security system in most countries is compulsory today.

Payment of benefits from the system is dependent of the following conditions: That you are registered as a job-seeker with the public employment services, that you are 16 years old and under 67 years old, that you live on the Faroe Islands, that you are capable of working and that you accept the obligation to be available for work.

People, who are looking for jobs, must accept an offer of suitable work from the public employment services and must co-operate in the formulation of action plans. If they fail to do so without any good reason, they loose their unemployment benefits temporarily for four weeks.

On the one hand, this can be said to be forced labour. However, as the employee only loses his benefits for a period of four weeks, it can be argued that the measure taken to punish persons, who do not accept suitable work, is proportional to the employment policy of the Government, namely to reach and maintain full employment on the Faroe Islands. Furthermore, there are no cases in practice that determine that a person unrightfully loses his benefits when not accepting a suitable job. Therefore it can be believed that the Committee will accept the legislation, and conclude that the Faroe Islands comply with this paragraph.

Job-seekers have the right to appeal decisions taken by the public unemployment services to the appeal committee of the services mentioned

[65] Lógtinglóg nr. 113 fra 13.06.1997 um arbeiðsloysistrygging of arbeiðsávising, sum broytt við løgtingslóg nr. 12 frá 09.02.2001 (Faroese Act on public employment services, 1997).

above. The Committee of Social Rights requires that the appeal committee is independent from the public employment services.[66]

It can be argued whether this committee is an independent body or not. The appeal committee is a special committee, established only to consider complaints concerning decisions taken by the public unemployment services. However, the appeal committee is not composed of people from the public unemployment services and is not situated in their offices. The appeal committee is composed of 3 persons, one representing the employee, one representing the employer and the chairman, who is a lawyer. Consequently, it can be held that the Committee of Social Rights would accept the appeal committee as an independent body and therefore conclude that the Faroe Islands comply with this paragraph.

3.2.3. Paragraph 3 – Free employment services

The public employment services on the Faroe Islands offers employment services free of charge to unemployed people, who want to be registered in the system. No private employment services exists on the Islands. The public employment services are guaranteed by law, [67] according to which the Faroe Islands are to be seen as one market. It is prohibited to set up limitations concerning skill when employment is considered; this is only allowed when a particular skill is required for a job.

The public employment services offer vocational guidance, training and rehabilitation to unemployed.[68] The offers are created according to the individual needs of the unemployed. Lately unemployment has been very low and therefore there has not been apparent need for unemployment services. However, the system has had success with offering different kinds of training and rehabilitation schemes for middle aged women, who have worked as housewives all their lives and now need employment outside the home.

The employment services system on the Faroe Islands fulfils similar conditions as the Danish employment services, and as the Committee has

[66] Council of Europe, European Social Charter: the Committee of Social Rights, Conclusions XV-1, Vol. 1, 2000, p. 140.

[67] Logtinglog nr. 113 fra 13.06.1997 um arbeidsloysistrygging of arbeidsavising, sum broytt vid logtingslog nr. 12 fra 09.02.2001, para 24 and 25 (Faroese Act on public employment services, 1997).

[68] Løgtinglóg nr. 113 fra 13.06.1997 um arbeiðsloysistrygging of arbeiðsávising, sum broytt vid løgtingslóg nr. 12 fra 09.02.2001, para 25 (Faroese Act on public employment services, 1997).

not given Denmark a negative conclusion in this respect,[69] it can be expected that the Committee will accept the above conditions as satisfactory and in conformity with the Charter.

3.3. Article 5 – The right to organise

3.3.1. Freedom to form trade unions

Freedom of association is protected by Article 78 of the Danish Constitution, according to which "Citizens have the right without prior permission to form associations for any lawful purpose." This provision also protects unions and employers' organisations against interference in matters such as the acquisition of legal personality and the right to affiliate with international organisations.

There is no particular legislation regarding the establishment of trade unions. Yet, the practice on the Faroe Islands is that trade unions are free to organise themselves concerning own activities, internal management and leadership, membership, registration, representatives, membership fees and other administrative measures.[70]

The situation is similar in Denmark and the Committee has concluded that Denmark is in conformity with Article 5 paragraph 1. An identical conclusion can be expected concerning the Faroe Islands.

3.3.2. Right to join or not to join a trade union

There is no legislation on the Faroe Islands which protects the right not to join a trade union. The situation is the same in Denmark. Still, it does not seem as if the Committee has reached the conclusion that Denmark does not comply with this paragraph because of the lack of legislation on the area.

On the other hand, the Committee has stated that Denmark does not comply with this paragraph as, according to Danish legislation, a worker can be dismissed if he refuses to join a trade union if, at the time of his engagement, he knew that his employment was conditional on membership of the trade union.[71] This law does not exist on the Faroe Islands and in

[69] Council of Europe, European Social Charter: European committee of Social Rights Conclusions XV-1, Vol. 1, 2000, p. 141.

[70] http://www.lnd.fo

[71] Council of Europe, European Social Charter: European committee of Social Rights Conclusions XV-1, Vol. 1, 2000, p. 142. In the United Kingdom, this is called a "closed shop", now outlawed in the United Kingdom.

practice there have been no cases on discrimination of any kind of workers, who do not want to be a part of trade unions.[72]

The Committee requires that the right not to join a trade union must be guaranteed either in law or case law and respected in practice.[73] As the right not to join a trade union can be said to be guaranteed in practice on the Faroe Islands, it could be assumed that the Committee would conclude that the Islands are in compliance with this paragraph.

3.3.3. Trade union activities
The right to assembly is guaranteed in § 79 of the Danish Constitution. According to this Article the citizens have a right to assembly without admission in advance from the authorities, if the assembly is unarmed. Outdoor assemblies can be prohibited, if they can amount to danger of the public peace.

There are no legislative measures taken concerning collective bargaining or protection against anti-trade union discrimination and reprisals for trade union activity on the Faroe Islands as required by the Committee to fulfil this paragraph. The same obstacle exists in Denmark. Consequently, the Committee has asked Denmark to provide further information on the matter before it can come to a conclusion whether or not Denmark is in breach of this paragraph.[74] If the Faroe Islands ratify this paragraph, the Committee would probably defer its conclusion until further information is gathered concerning this paragraph.
Representation
There are no statutory rules defining the right to representation on the Faroe Islands. However, in practice the authorities recognise that the trade unions are entitled to bargain. There are 32 trade unions on the Faroe Islands and they are all entitled to bargain with the employer.[75]

The Committee requires that a restriction in the right to representation should be well explained by the member state.[76] As the Faroe Islands do not have any restrictions in the right to representation, it can be expected that

[72] http://www.lnd.fo/avgerd.htm
[73] Council of Europe, Short guide to the European Social Charter, the Case Law, 2000, p.136.
[74] Council of Europe, European Social Charter: European committee of Social Rights Conclusions XV-1, Vol. 1, 2000, p. 143.
[75] http://www.lnd.fo
[76] Council of Europe, European Social Charter: European committee of Social Rights Conclusions XV-1, Vol. 1, 2000, pp. 329-330.

the Committee will conclude that the Faroe Islands comply with this Charter provision.

3.3.5. Persons protected by art. 5 (personal scope)
Eligibility of trade union representatives, members of co-operation committees are regulated by social partners.[77]

Article 78 of the Danish Constitution applies to both civil servants, the police, the armed forces in the same way as for other parts of the labour market.

The Committee has found that Denmark is in breach of this paragraph because of the Danish Ship's Registrar, which states that collective agreements on wages and working conditions concluded by Danish trade unions are only applicable to seafarers resident in Denmark.[78] This law does not exist on the Faroe Islands. However, there could be a problem concerning the law on civil servants mentioned below under Article 6 paragraph 4.

This situation would probably lead the Committee to conclude that the Faroe Islands are not complying with this paragraph.

3.4. Article 6 – The right to bargain collectively
3.4.1. Paragraph 1 – Joint Consultation
Joint consultation, that is consultation between employees and employers or the organisations that represent them,[79] is not regulated in legislation on the Faroe Islands. However, the right to joint consultation is protected in collective agreements.[80] These rights are respected by employers in practice both in the private and in the public sectors.

The Committee requires that joint consultation should take place at both national and regional levels and within firms.[81] On the Faroe Islands joint consultation only takes place at a national level.

It can be expected, that this would give the Faroe Islands problems concerning the compliance with this paragraph. However, the Committee

[77] http://www.lnd.fo
[78] Council of Europe, ESC - Committee of Social Rights Conclusions XV-1, Vol. 1.
[79] Council of Europe, Short Guide, p. 139.
[80] http://www.lnd.fo
[81] Council of Europe, Short Guide, p. 139.

has made exceptions in regard to the requirement "local level" in certain cases. Concerning Malta, which has a population of app. 350,000 people, the Committee has accepted that collective bargaining only takes place nationally, as the conditions on Malta do not allow for bargaining on a local level, as the population is not that large.[82]

This means that the Committee not always sets the same standards for the member countries. In some cases it sets the standards individually according to the means and possibilities in the particular member country.

Therefore, it could be believed that the Committee would consider similar standards for the Faroe Islands concerning the local level, considering that the country is miniature, with only 47,000 inhabitants in total.

3.4.2. Paragraph 2 – Voluntary negotiation

Similar to the Danish situation, virtually all issues concerning working conditions are settled by collective agreements on the Faroe Islands. The Faroese labour market is regulated mostly through agreements between the social partners and to a lesser extent through legislation.

All collective bargaining takes place at a national level. In the public sector it is the Faroese Government that bargains with the trade unions. The trade unions bargain with the Faroese Government about wages and working conditions. The bargaining takes place approximately every second year. The most dominant trade union is the Union of Administration Personnel "Starvsmannafelagið". In the private sector, the bargaining is similarly centralised. The employers' organisations and the employees' organisations bargain in one place approximately every second year. The most important private bargaining is between the Workers Union "Abreiðarafelagið" and the Private employers organisation.

As mentioned above under Article 6 paragraph 1, it could be assumed that the Committee would accept that the collective bargaining on the Faroe Islands is conducted on a national level only. Otherwise, it must be said that it would be very impractical for the Faroe Islands. It would be unnecessary and costly for the Islands to establish collective bargaining at a local level, as the inhabitants in total on the Faroe Islands do not amount to more than a small village in the other member countries.

[82] Council of Europe, ESC – Committee of Social Rights Conclusions XV-1, Vol. 2, pp. 405-408.

3.4.3. Paragraph 3 - Conciliation and arbitration.
According to Act no. 40/1984 about mediation, it is stated that a mediator should be appointed to solve conflicts between employers and employees. The mediator is appointed for three years at a time and is appointed by a Committee composed by the major trade unions on the Faroe Islands.

The mediator has to keep himself up to date concerning all conditions on the working market. When there is a reason to fear a strike, the mediator can by his own means or at the request of one of the parties call the parties in to negotiations. The parties can nominate own representatives. The mediator can determine that no strike can take place before the negotiations are finished. This can only be done for a period of one week and can only be done once through a particular disagreement on the labour market.

It can be held that this law provides a basis for voluntary conciliation and arbitration, probably the Committee would conclude that the Faroe Islands are in conformity with this paragraph.

However, there is a possibility to compulsory arbitration on the Faroe Islands by passing a bill through Parliament, which terminates a strike. In the 1998 public sector strike, the Government considered this option. It was held, that the strike was having crucial effects on the society, i.e. the hospitals were not working and a termination of the strike was considered to be necessary to protect the rights of public interest and - health. This could be seen as compulsory arbitration, which is prohibited under the Charter.

On the other hand, the Charter gives room for exceptions if the measures taken are necessary in a democratic society, if they are taken for the protection of the rights and freedoms of others or for the protection of public interest, national security, public health or morals.[83] It could be that the Faroe Islands could explain compulsory arbitration according to this article.

3.4.4. Paragraph 4 – The right to collective action
Who is entitled to take collective action?
A group of workers acting jointly for a common purpose is entitled to take collective action. Lockouts can be established by either individual employers or by several employers in union.[84]

[83] Article 31 paragraph 1 of the European Social Charter.
[84] http://www.lnd.fo

As the situation is similar on the Danish and the Faroese labour market, and the Committee has accepted the Danish situation, it can be expected that the Committee will accept the Faroese situation.

Restrictions in the right to collective action

According to the Faroese Act on civil servants a restriction is made concerning civil servants in positions with particular responsibility.[85] These civil servants have no right to strike. The reason for this is that they are placed in key positions in the administration and in important public institutions, as e.g. teachers. The Government has estimated that if they are on a strike, it will have fundamental consequences for the society as a whole. In compensation for the prohibition to strike, these civil servants get much better wages than other civil servants.

Yet these civil servants accept to get much higher wage than other workers to sacrifice their right to strike. These people are often placed on very responsible posts, which the Government assumes can not be laid down by work. It would have catastrophic consequences for the society.

Danish legislation is similar to the Faroese legislation in this respect. The Committee has asked Denmark to provide detailed information on why this legislation should be necessary in a democratic society.[86] The same conclusion could be expected concerning the Faroe Islands.

It could be argued that the Committee goes too far when concluding that the above Act possibly could constitute a breach of the right to collective action. Some would say that this is an area which is concerned with national politics, and where the Committee should not interfere. The right to collective action has to be balanced with the what is best for the common good. This balance is one, which the Government has to make.

On the other hand, it could be said, that if the Committee gives up in this regard, the standards would fall on many other areas. Therefore you could justify the Committee's conclusions.

Therefore, if the Faroe Islands wish to ratify this paragraph, the Islands have to provide a good explanation for the Committee why the above Act comes under the exception in article 31 paragraph 1 of the Charter.

---

[85] løgtingslóg nr. 31 frá 5. juli 1971 um tænastumenn landsins, sum seinast broytt við løgtingslóg nr. 73 frá 13. juni 1995 (Faroese Act concerning certain civil servants, 1971).

[86] Article 31 paragraph 1 of the European Social Charter.

Consequences of collective action
The relationship between employer and employee is disconnected during a strike, and for the period the strike lasts they are not bound by the terms of the contract. However, the contract enters into force again, when the strike is finished.[87]

The Committee has stated that if striking results in termination of the employment contract, it is not compatible with Article 6 paragraph 4. As this is not the case on the Faroe Islands, it can be expected that the Islands are in compliance with this paragraph.

Procedural requirements to collective action
The collective agreements usually contain detailed procedural rules for the initiation of collective action. Most of the collective agreements require the employees' organisation to notify twice to the Government or employers' organisation. The first notification should be at least 14 days before the action is to start and the second 7 days before the action is to start.[88]

The situation is similar to the Danish situation, and the Committee has deferred its conclusion in this respect, as it wants further explanation on the cooling-off period mentioned above. The same conclusion can be expected on the Faroe Islands.

3.5. Article 12 – The right to social security
3.5.1. Paragraph 1 – Establishment or maintenance of a system of social security
The Faroe Islands have established and maintain a system of social security, which covers benefits in times of sickness, incapacity of work, maternity, unemployment, old age, death, widowhood and occupational accidents and diseases.[89] The Faroese legislation covers a large proportion of the population.

[87] http://www.lnd.fo
[88] http://www.lnd.fo
[89] Løgtingslóg nr. 48 frá 10. Maj 2000 um almannapensiónir, við seinni broytingum (Faroese Act on social pensions, 2000); Løgtingslóg nr. 107 frá 22. December 1999 um áseting av almannaveitingum, við seinni broytingum (Faroese Act on benefits to pensioners); Løgtingslóg nr. 74 frá 8. Mai 2001 um dagpening vegna sjúku vm. (Faroese Act on benefits in sickness, 2001).

As the above mentioned is what the Committee requires to fulfil this paragraph, it can be said that the Committee can be expected to accept the Faroe Islands in compliance with this paragraph.

3.5.2. Paragraph 2 – Maintenance of a social security system at a satisfactory level equal to that required for ratification of International Labour Convention No. 102
The Committee requires that the member states fulfil the regulations laid down in the ILO Convention No. 102. Following a thorough examination of the Convention, it can be concluded that the Faroese legislation concerning health- and security, fulfil all the standards laid down in the Convention. Therefore, it can be expected that the Committee will conclude that the Islands are in compliance with this paragraph.

3.5.3. Paragraph 3 – Progressive improvement of the social security system
The Faroe Islands have made improvements of the social security system. Below some of the changes since 1996 will be described.

A new Act has been passed through parliament allowing parents better conditions when on maternity leave.[90] Extensive amendments have been made to the social pension system improving the conditions of pensioners as well as granting them higher benefits.[91] A new Act on reimbursement of cost for medical assistance was introduced in 1999, which made medicine less expensive for the consumer.[92]

It can be believed that the Committee would accept these improvements and other not mentioned improvements as satisfactory and in compliance with this paragraph.

3.5.4. Paragraph 4 – Equal treatment for the nationals of other Contracting Parties with respect to social security
The Faroe Islands are bound by the Nordic Convention of 1992 on Social Security[93] and Nordic Convention of 1994 on Social Assistance.[94] This

[90] Løgtingslóg ??
[91] løgtingslóg nr. 48 frá 10. mai 2000 um almannapensiónir o.a., sum broytt við løgtingslóg nr. 3 frá 25. januar 2001 (Faroese Act on social pensions, 2000).
[92] K. nr. 14 frá 31.01.1994 um forskriftir og forskriftaskyldu o.a.m. sum seinast broytt við K. nr. 62 frá 28.06.1999 (Faroese secondary legislation on prescriptions, 1999).
[93] "Nordisk Konvention af 15. Juni 1992 om Social Sikring" (Nordic Convention on Social Security, 1992).
[94] "Nordisk Konvention af 14. Juni 1994 om Social Bistand og Sociale Tjenester" (Nordic Convention on Social Assistance, 1994).

Convention secures nationals from the other Nordic states family benefits, social pension, medical assistance and retention and maintenance of accrued rights on equal terms as nationals.

Concerning social pensions the Nordic Convention on Social Security states that if nationals of Nordic states have been employed in another Nordic state for a period of three years, they are entitled to pension from that state. Equally, the Nordic Convention on Social Security provides the accumulation of insurance or employment periods for nationals of Nordic states within the territory of another Nordic state concerning maintenance of accrued rights.

As the Faroe Islands are not a part of the EU, the Community Regulation 1408/71 does not apply to the Islands concerning the other EU countries. Certain bilateral agreements[95] with member countries guarantee non-national citizens social security, however, such agreements only exist with a few Contracting Parties of the Charter.

Therefore, the Faroese social security system does not provide nationals of other Contracting Parties equal treatment with Faroese nationals and will consequently be in breach of this Charter paragraph.

This can be said to be an immense problem for the Faroese ratification of the Charter. The European Social Charter does not as the Nordic Convention on Social Security provide a network, which automatically secures nationals of Contracting Parities residing in the host country.

The rights set forth in the ESC and the Nordic Convention are similar, but differ in many ways.

The European Social Charter builds up a system of supervision, which secures the qualitative rights of the citizens and European nationals in the member state, that is whether the rights in the different member countries are to a certain standard or not. However, the European Social Charter in itself does not secure any rights. It just builds up a system, which is to supervise whether or not the member states fulfil the Charter provisions by creating new legislation and entering new international agreements concerning the Charter.

[95] Millumtjoda sattmalar (International treaties): http ://www.logting.fo choose "loggava", then "traktatir".

The Nordic Convention, on the contrary, does not build up such a supervisory mechanism, but the Convention itself provides for the right of all Nordic nationals to be treated equally in the other Nordic states. In this respect, it can be concluded that the Nordic Convention is more useful on the Faroe Islands than the European Social Charter.

The Convention is very useful on the Faroe Islands, especially the pension system of the Convention, as people travel a lot and as it is very common that people work outside the Islands, as the country is small and employment possibilities can be barely challenging for many.

This discussion still leaves the Faroe Islands with the problem of how to comply with Article 12 paragraph 4, if the Faroe Islands should ratify the Charter. The solution to this problem could be that the Faroese Government enters into bilateral agreement with all the Contracting States. This might seem an impossible task for the Faroese Government, as the Islands are not a part of the EU and therefore can not be bound by the Community Regulation 1408/71. It is possible for the Islands to accept the Community Regulation as binding for the Faroe Islands, but in that case the Regulation would not be binding for the other EU countries towards the Faroe Islands.

The other solution would be not to ratify Article 12 paragraph 4. However, it could be argued, that this is an unreasonable solution, as this Article would be one of the most useful Charter Articles for Faroese citizens travelling or working in Europe.

3.6. Article 13 – the right to social and medical assistance

3.6.1. Paragraph 1 – Social and medical assistance for those in need

According to the Danish Constitution § 75 all people who are not able to earn their own living and whose maintenance does not depend upon another person, have the right to support from the Government, on condition that they follow the obligations set forth in national laws.

These rights are further developed in Act 100/1988 on social assistance on the Faroe Islands.[96] According to this Act all people, who are in need of social assistance have a right to receive assistance from the Government. This means that both nationals and non-nationals, who are temporarily staying on the Faroe Islands have a right to social assistance. The persons in

[96] "Lov nr. 100 af 2. Marts 1988 for Færøerne om offentlig forsorg med senere ændringer" (Faroese Act on social security and assistance, 1988).

need receive assistance in form of cash or practical help, such as domestic help or purchase of equipment regarding both social and medical assistance.

The institution, which assesses whether people are entitled to social assistance, is the Social Services Institution (Almannastovan). A person in need can receive either permanent or temporary assistance, when a person because of illness, divorce, birth or unemployment temporarily is unable to work. The condition for allowing assistance is that the person or his partner has exhausted all employment possibilities and that it is estimated that the person will not be able to pay the expense. The condition for receiving permanent assistance is that it is estimated that the person will not be able to work again, i.e. because of invalidity. This kind of assistance is seldom granted. In 1997 permanent assistance was only granted in 29 cases.

The amount of people receiving temporary social assistance on the Faroe Islands has diminished in the 1990's. In 1992 3,237 people received temporary social assistance, compared to 1.910 in 1997.[97] This is mostly due to the fact that the employment situation stabilised in the late 1990's.[98]

Concerning non-nationals, the Act states that these are entitled to temporary social assistance. However, it is also stated that if non-nationals obtain continued assistance, the Social Services Institution can decide that the persons may be returned to their home state. The restriction can be avoided, if the Government enters into an agreement with non-nationals' home country.[99]

From the above mentioned, it can be said that the Faroe Islands have a well developed service concerning social assistance for those in need.

However, as the Committee requires that no discrimination is made towards non-nationals, it can be assumed that the Committee will draw a negative conclusion concerning Article 13 paragraph 1, because of the restriction in the Faroese legislation towards non-nationals, as the Appendix to the Charter states that non-nationals who are legally resident or regularly working in a contracting state, are entitled to be treated on the same basis as nationals of the host state.[100]

---

[97] Hagstova Føroya, Árbók fyri Føroyar, 1998, p. 341 (Statistics for the Faroe Islands, 1998).
[98] Hagstova Føroya, Árbók fyri Føroyar, 1998, p. 343 (Statistics for the Faroe Islands, 1998).
[99] § 1, 4-5, "Lov nr. 100 af 2. Marts 1988 for Færøerne om offentlig forsorg med senere ændringer" (Faroese Act on social security and assistance, 1988).
[100] Council of Europe, European Social Charter, Short Guide, 2000, p. 168.

Apart from this, there is a six week qualifying period for new residents before they become eligible for health care according to the Faroese Health Care Act.[101] It can similarly be assumed that this situation will lead the Committee to conclude that the Faroese legislation is not in conformity with this paragraph.

3.6.2. Paragraph 2 – Non-discrimination with respect to persons receiving social and medical assistance.
According to § 29, 1 of the Danish Constitution disenfranchisement is allowed of those who receive poor relief. Present legislation on social assistance on the Faroe Islands does not allow such restrictions to be made. These restrictions where removed from Danish legislation by the Public Assistance Act 1961. This Act was also valid on the Faroe Islands.

As the legislation on the Faroe Islands therefore ensures that persons receiving social assistance do not suffer from a diminution of their political and social rights, it can be expected that the Committee will conclude that Faroe Islands are in conformity with this paragraph.

3.6.3. Paragraph 3 – Advice and assistance in case of want
The Institution in charge of advice and assistance in case of want on the Faroe Islands is the Social Services Institution (Almannastovan). The institution is organised under the Ministry of Health - and Social Affairs and has branches located on four different Islands. The institution has direct customer contact and gives personal advice and assistance to persons or families in need.

Most of the staff at the Social Services Institution are social workers assigned to advice clients in matters concerning social assistance, social- and invalidity pension and child protection.

The assistance given to the citizen on this area can be compared to the Danish assistance and as the Committee has concluded that Denmark is in conformity with the Charter concerning this paragraph, it can be assumed that the conclusion will be the same concerning the Faroe Islands.
3.6.4. Paragraph 4 – Social and medical assistance for nationals of Contracting Parties lawfully within the territory of another Contracting Parties

[101] Løgtingslóg nr. ?? frá 1996 um Sjúkrahúsverk (Faroese Act on health assistance, 1996).

The Faroe Islands have ratified the Nordic Convention on social security. According to this convention all nationals in the Nordic Countries or residents, who are temporarily in a Nordic Country are provided with social assistance.

However, the Faroe Islands have not ratified the "European Convention on Social and Medical Assistance of 1953". Therefore, nationals from the other European Contracting Parties are not secured social and medical assistance when they reside on the Faroe Islands.

This would cause similar problems for the Faroe Islands as mentioned above concerning Article 12 paragraph 4. It would presumably lead the Committee to the conclusion that the Faroe Islands are not in conformity with Article 13 paragraph 4.

However, this obstacle would not be as immense to surmount as the problem mentioned concerning equal treatment for the nationals of other Contracting Parties with respect to social security. It would not be as big a problem for the Faroe Islands to ratify the "European Convention on Social and Medical Assistance of 1953", as to enter into bilateral agreement with every single European member state to the European Social Charter.

Moreover, the above convention would be very useful for the Faroese citizen, as they travel and work considerably outside the country. It would be a great advantage for the people on the Faroe Islands to be secured concerning social and medical assistance, if they where temporarily resident in one of the other European Contracting States.

Therefore, it could be recommendable for the Faroe Islands to ratify the Convention mentioned above and thereby fulfilling the requirements for Article 13 paragraph 4 of the European Social Charter.

3.7. Article 16 – The right of the family to social, legal and economic protection

3.7.1. Legal protection of the family

On the Faroe Islands husband and wife are obliged to support each other and their children in marriage. Marriage is entered into by publishing of the banns. Divorce is granted by judgement. Husband and wife are equal concerning rights and duties within the couple and concerning the children. In marriage the husband and wife can decide whether their property is in

common between them or they keep their property separated as it was before the marriage.[102]

If the parents are divorced or the child is born outside matrimony, both parents are obliged to support the child. If one of the parents does not fulfil this obligation, the authorities can order the parent to support the child.[103]

Concerning adoption a application is sent to the Faroese adoption authorities, which considers whether the couple applying is suitable for adoption or not. Parents adopting a child receive 15,000 Danish kroner in support from the Government.[104]

As the criteria for fulfilling this paragraph is that the family is protected and that husband and wife are equal in marriage, it can be expected that the Faroe Islands comply with this paragraph.

3.7.2. Family policy

Family benefits

On the Faroe Islands families and single mothers with very low income obtain benefits from the Government.[105] However, it can not be said that the benefit given is adequate for the above mentioned groups to be able to have a good standard of living. As this is a requirement from the Committee it can be expected that the Committee will conclude that the Islands do not comply with this paragraph.

Taxation provisions

In 2001 the parliament agreed to call upon the Government to prepare an amendment to the taw law providing for better family conditions.[106] The amendment should secure that wives staying at home looking for the children, should have the possibility to be taxed of half of their husband's income. (Needs more dearly explanation) !!

---

[102] Lov nr. 56 af 18. Marts 1925 om ægteskabets retsvirkninger, med senere ændringer (Danish Act applying for the Faroe Islands, on legal status in marriage, 1925).

[103] Lov nr. ?? af 1960 om børns retstilling, med senere ændringer (Danish Act applying for the Faroe Islands, on children's legal status, 1960).

[104] Rigsombudsmandens på Færøerne, Beretning, 1999, p. 217 (Report from the Danish Authority on the Faroe Islands, 1999).

[105] Kunngerð nr. ?? frá ?? um gjaldsreglur a dagstovni (Faroese secondary legislation on payment for places in kindergartens).

[106] Løgtingsins Uppskot til Samtyktar 3. Mars 2001 (Faroese Parliamentary request to the Faroese Government, 2001).

On the one hand this proposal can be said to better the conditions of families on the Faroe Islands. On the other hand, it can be said that the amendment can lead to discrimination towards married couples, where both man and wife are working outside the home and couples that are not married, where the woman works at home with the children.

Consequently, it is difficult to say whether the Committee will accept the amendment as being in compliance with the Charter.

Child care services

A new Act on day-care services entered into force on the Faroe Islands in 2000.[107] The Act determines the purpose of kindergartens and states that the local authorities are responsible for offering children places in kindergarten. The kindergartens are open in the daytime, but the local authorities can allow kindergartens to open during night time as well. In regard to payment, the parents should only pay 30 % of the kindergarten expenses.

The offer concerning day-care services on the Faroe Islands is similar to the Danish day-care services. As the Committee has concluded that the Danish offer is satisfactory and in compliance with the Charter,[108] it can be expected that the Committee will conclude similarly concerning the Faroe Islands.

However, the authorities have had a problem by creating a sufficient number of places in kindergarten for children. The authorities are working on solving the problem, but this might cause the Committee to give the Faroe Islands a negative conclusion in this regard.

In November 2000 a new white paper on child protection was released. In this report it is stated that the Minister intends to create a new Act on child protection aiming at bettering the conditions for children in need on the Faroe Islands. For this purpose the child protection system will be renewed and made more efficient so that the legal security of both parents and children is improved.

It is to be expected that the Committee will defer its conclusion in this matter until the new proposal on child protection has been presented to the Parliament.

---

[107] Løgtinglsóg nr. 67 frá 10.05.2000 um dagstovnar og dagrøkt (Faroese Act on kindergartens, 2000).

[108] Council of Europe, European Social Charter: The European Committee of Social Rights, Conclusions XV-1, Vol. 1, p. 171.

Family representation and advice services
According to the Faroese law on day-care services, a parental committee is established for every kindergarten on the Islands. The committee shall work for better co-operation between the parents, the kindergarten end the local authorities and shall give the kindergarten advice concerning the children.[109]

It can be expected, that this measure will be welcomed by the Committee. However, it is difficult to say whether the Committee will come to the conclusion that further measures have to be taken on other areas to secure parents representation when it comes to services concerning their own children.

Housing policy
There are two laws valid on the Faroe Islands concerning housing. One concerns owned apartments[110] and the other concerns rented property.[111] Both laws need revision to be updated and none of these laws protect families in particular.

As a whole, it can be said that measures taken concerning housing policy on the Faroe Islands are very poor. The Committee requires that the Contracting Parties help fund the building of family houses and provide financial aid to help families accede to housing. As these measures do not exist on the Faroe Islands, it can be expected, that the Committee will conclude that the Faroe Islands are not in compliance with the Charter in this regard.

Family support and consultation
According to the Child Protection law, the parents are taken in for consultation, when the authorities have been informed that the children are not well taken care off. The authorities co-operate with the parents concerning measures taken in regard to the children.[112]

---

[109] § 9, Løgtinglsóg nr. 67 frá 10.05.2000 um dagstovnar og dagrøkt (Faroese Act on kindergartens, 2000).
[110] Løgtingslóg nr. 11 frá 3. apríl 1970 um eigaraíbúðir / om ejerlejligheder, sum broytt við løgtingslóg nr. 33 frá 26. mai 1988 (Faroese Act on owner apartments, 1970).
[111] Midlertidig bestemmelse for færøerne nr. 41 af 2. december 1940 om lejeforhold, som senest ændret ved lov nr. 186 af 7. juni 1958 (Danish Act applying for the Faroe Islands, on renting property, 1940).
[112] "Lov nr. 104 af 2. Marts 1988 for Færøerne om børneforsorg, med senere ændringer" (Faroese Act on Child Protection, 1988).

It is difficult to say whether the Committee will accept this measure as satisfactory or if it will require that similar measures are taken on other areas concerning parental consultation.

4. The revised European Social Charter and the 1995 Additional Protocol.

Denmark has not ratified the 1991 and the 1995 Additional Protocols to the Charter. Therefore, the compliance with this part of the Charter will not be examined in the article. However, Denmark intends to ratify the revised European Social Charter in near future. The revised Charter has been submitted to all the relevant Ministries, public institutions and private organisations to assess to which extent the instrument should be ratified by Denmark. Consequently, it is relevant to examine whether the Faroe Islands should ratify the revised Charter, at the time it will be ratified by Denmark.

In this Chapter, a comparison will be made between the key articles in the original Social Charter, examined in chapter 3, and the key articles in the revised Social Charter. Secondly, the new invention in this instrument, the complaints procedure, will be examined to see which impact it could have for the Faroe Islands to ratify this part of the Charter. Thirdly, the new article on non-discrimination in the revised Charter will be assessed.

4.1. Comparison between the key articles of the original and the revised Charter

As regards the key articles of the revised Charter, the articles do not differ considerably from the articles in the original Charter. Accordingly, there are no amendments to article 1 on the right to work, article 5 on the right to organise, article 6 on the right to bargain collectively and article 13 on the right to social and medical assistance.[113]

Minor changes have been made to the other key articles. Article 12, paragraph 2 has been amended, the other remain unchanged. Paragraph 2 requires that the member states maintain the social security system at a satisfactory level. This level should at least be equal to that necessary for the ratification of the European Code of Social Security.[114] In the original Charter it is stated that the level should at least be equal to that required for ratification of the ILO Convention No. 102.[115]

---

[113] Council of Europe, Collected texts 2nd edition, "Explanatory report to the revised European Social Charter", 2000, pp. 157-163.
[114] Article 12 paragraph 2 of the revised Social Charter.
[115] Article 12 paragraph 2 of the original Social Charter.

As Danish Ministries, public institutions and private organisations have advised against a Danish ratification of article 12 paragraph 2,[116] as it is held that Denmark would not comply with the paragraph, there is little doubt that the Faroe Islands would not comply with this paragraph either.

As regards article 16, the text itself has not been amended, however, the protection of "mothers" will be covered by this article in the revised Charter. The "mothers" may be both single-parents and living in a couple.[117]

The article will particularly cover the protection of women, who are not covered by any social security scheme providing the necessary financial assistance during a reasonable period before and after their confinement and satisfactory medical care during confinement.[118]

Examine if the Faroese legislation and practice complies with this amendment.

Apart from this, changes have been made to key article 19, but let alone that this article was not examined in chapter 3 as Denmark has not ratified the article, it will not be examined in this chapter.

Moreover, the revised Charter changes the number of key provisions that Contracting Parties should undertake. According to article A paragraph 1,b the Contracting Parties have to consider themselves bound by at least 6 of the key articles, compared to at least 5 of the key articles in the original Charter. Furthermore, article A introduces two new key provision, namely article 7 and article 20 as key provisions to the Charter. [119] Consequently, Contracting Parties now have to choose to be bound by 6 of the provisions 1, 5, 6, 7, 12, 13, 16, 19 and 20.

4.1.1. Denmark's attitude to the ratification of key provisions in the revised Charter

The general Danish attitude to the ratification of the revised Charter has been reluctant. The different Danish Ministries, public institutions and

[116] Socialministeriet, Statusnotat af 25.09.1997, p. 4 (Note on the revised Charter from the Ministry of Social Affairs, Denmark, 1997).
[117] Council of Europe, Collected texts 2nd edition, "Explanatory report to the revised European Social Charter", 2000, p. 163.
[118] Council of Europe, Collected texts 2nd edition, "Explanatory report to the revised European Social Charter", 2000, p. 163.
[119] Article A paragraph 1,b of the revised Social Charter.

private organisations, which have uttered their opinion on the matter, request that a number of reservations are made to the revised Charter before ratifying it.[120]

As regards the key provisions, reservations are requested concerning article 7, article 12 paragraph 2 and article 19. Apart from this, reservations are requested concerning article 2 paragraphs 1, 4 and 7, article 4 paragraphs 4-5, article 8 paragraphs 2-5, article 24, 25, 26, 27, 28, 29 and article E.[121]

The above discussion, reveals that there are certain problems concerning the ratification of the revised Charter in Denmark. It can be imagined that similar problems will occur concerning a Faroese ratification of the revised Charter.

4.2. The collective complaints procedure

As mentioned in the introduction, the revised European Social Charter, opened to signature in 1996, combines the rights set forth in the original Social Charter and the three Additional Protocols. The Additional Protocol, opened to signature in 1995, introduced a system of collective complaints procedure.

The main purpose the Additional Protocol from 1995, later repeated in the revised European Social Charter, is to improve the efficiency of the supervisory machinery of the Charter. The instruments enable international organisations of employers and trade unions, international non-Governmental organisations and national organisations of employers and trade unions from the state concerned to file a collective complaint alleging violations of the Charter. This complaint is to be dealt with in addition to the current procedure for examining Governments' reports.[122]

The intention of the procedure concerning the collective complaints, is to create a system that resembles more the procedure of a court than the one of a committee. Firstly, the collective complaint is examined by the European Committee of Social Rights, Committee of Independent Experts of the Charter, which decides on the admissibility of the complaint. Secondly, if the complaint is admissible, the Committee examines the merits, that is collects information from the parties, from the other Contracting States to the Charter and from both sides of the industry. Then the Committee draws

[120] Socialministeriet, Statusnotan om den reviderede socialpagt, 25. September 1997, p. 2.
[121] Socialministeriet, Statusnotan om den reviderede socialpagt, 25. September 1997, p. 2.
[122] Council of Europe, European Social Charter: Short Guide, 2000, p. 67.

up a report for the Committee of Ministers where it concludes whether or not there has been a breach to the Charter. Thereafter, the Committee of Ministers adopts a resolution closing the procedure and can address a recommendation to Contracting Party in breach of the Charter.[123]

4.2.1. Benefits and shortcomings of the collective complaints procedure
By some authors, the new system is praised as it is said to strengthen the Charter's effectiveness and credibility,[124] providing a very useful and quite separate system that adds very much to the reporting system.[125]

However, other authors are of the contrary opinion that the collective complaints procedure adds little to the current system, as the result of the reporting process and the complaint process were identical in Complaint No. 1/1998 International Commission of Jurists against Portugal.[126]

Nevertheless, it can be argued that the diminished role of the Governmental Committee, in its relation to the European Committee of Social Rights, will simplify the system and speed the process up. In the original instrument the report and conclusions from the European Committee of Social Rights was to be passed to the Governmental Committee. The latter Committee had developed a practice, which meant that it only passed the experts' conclusions, that it agreed upon to the Committee of Ministers. This diminished the experts' influence and many cases did not reach the final stage because of the just mentioned political filter. The new Protocol removes the power of the Governmental Committee to interpret the Charter and making its main function to advise the Committee of Ministers.[127]

The Danish Ministries are of an other point of view. They are worried that the role of the Governmental Committee is extensively reduced according to the Additional Protocol of 1995. The Danish system can be very different

[123] Council of Europe, European Social Charter: Short Guide, 2000, p. 69.
[124] Council of Europe, the Social Charter of the 21st Century, "Theme 1: Reforms of the Charter since 1989 – Reform of the supervisory machinery and reform of the rights guaranteed" by Mr. Paolo Pucci di Benisichi, Ambassador, Permanent representative of Italy to the Council of Europe, Chairman of the Rapporteur Group on Human Rights of the Committee of Ministers of the Council of Europe, 2000, p. 52.
[125] Council of Europe, the Social Charter of the 21st Century, "Theme 1: The collective complaints procedure" by David Harris, professor of Public International Law at the University of Nottingham (UK), former member of the Committee of Independent Experts of the Social Charter, 2000, p. 108.
[126] Holly Cullen, The Collective Complaints Mechanism of the European Social Charter, 2000, pp. 6-7.
[127] A.H. Robertson and J.G. Merrills, Human Rights in the World, 1996, p. 177.

from the other member states and hence, it can be difficult and time consuming to explain the Danish system to others. The Governmental Committee has played a tremendous role in informing the other members about special Danish conditions. Therefore, it would be a loss for Denmark if the role of the Governmental Committee was reduced.[128]

It must be said to be a fact from the practice of the supervision system, that the Committee on Social Rights has been more critical of the Governments' reports than the Governmental Committee.[129]

Furthermore, it has been argued that it would be a loss for the procedure concerning social and economic matters at the Council of Europe, if the Committee of Ministers no longer has the possibility to change the legal assessment of the Committee of Social Rights, but only has the possibility to make use of social, economical and political considerations when assessing a complaint.[130]

Consequently, the different Ministries, public institutions and private organisations, which have expressed their opinion on the matter to the Danish Government, recommend that Denmark does not ratify the collective complaints procedure manifested in the Additional Protocol of 1995 and in the revised Charter.[131]

On the other hand, it is understandable that the Social Partners and the NGOs consider the present procedure unbiased and unsatisfactory, as the Government on the one hand is a part in the case proceeding before the Committee and on the other hand the Government is a part of the Committee of Ministers, the body which is to assess whether it should give a recommendation to itself or not.

It is comprehensible, that both the Social Partners' and the NGOs have welcomed the new system of collective complaints.[132] Nevertheless, Danish Ministries, who will finally decide whether or not Denmark ratifies the instrument, reckon that the collective complaints procedure can become too unpredictable. The advantage of the new system is that organisations in member countries, which have a weak structure concerning the freedom to

[128] Socialministeriet, Statusnotat af 25.09.1997, p. 4.
[129] Human Rights in the World, p. 175.
[130] Socialministeriet, Statusnotat af 25.09.1997, p. 4.
[131] Socialministeriet, Statusnotat af 25.09.1997, p. 4.
[132] Council of Europe, the Social Charter of the 21st Century, 2000, p. 130 and p.151.

organise, can have a better possibility to complain. However, it is claimed that countries like Denmark and the Faroe Islands, which have a well organised structure of organisations, do not need this procedure.[133]

The collective complaints procedure is often compared to the procedure of the European Human Rights Court. One difference is though that it is not a requirement that domestic remedies have to be exhausted.[134] The reason for this is simply because it is not possible to bring most complaints concerning economic and social rights before national courts. Yet, this means that states considering whether to ratify the collective complaints procedure may be very cautious. The states have less control over the complainants if they have direct access to the European Social Charter system.

One final problem is to be mentioned concerning the complaints procedure. The outcome can not be a legally binding decision. It can just be hoped that the countries will follow the recommendations from the Committee of Ministers.[135] However, whether the recommendations are binding or not, it will constitute a problem for Denmark and the Faroe Islands. If the member states take recommendations from the Committee of Ministers seriously, which is indeed the case in Denmark and on the Faroe Islands, the recommendations are very demanding on the member states as examined in chapter 3. Therefore, it can be said that it is not important whether the decisions are legally binding or not. Denmark and the Faroe Islands will feel pressured to fulfil any recommendations made by the Committee of Ministers.

4.2.1.2. Certain issues concerning admissibility.
The European Committee on Social Rights decides whether a collective complaint is admissible or not.[136] In its first decision, the Committee has taken a broad approach to the admissibility of collective complaints.[137] This

[133] Socialministeriet, Statusnotat af 25.09.1997, p. 4.
[134] Council of Europe, the Social Charter of the 21st Century, "Theme 2: The Social Partners' Opinion." by Mr. Klaus Lørcher, European Trade Union Confederation, Legal advisor of the Deutsche Postgewerkschaft, 2000, p. 136.
[135] Council of Europe, the Social Charter of the 21st Century, "Theme 1: The collective complaints procedure" by David Harris, professor of Public International Law at the University of Nottingham (UK), former member of the Committee of Independent Experts of the Social Charter, 2000, p. 108.
[136] Article 7 paragraph 1 of the Additional Protocol of 1995 providing for a system of collective complaints.
[137] Council of Europe, Human Rights Social Charter Monographs – No. 9: Complaint No. 1/1998, International Commission of Jurists v. Portugal, pp. 21-33.

could be a problem for the Faroe Islands, as large a group of people could have a possibility to complain.

It can be argued, that if the Committee continues this broad approach towards collective complaints, it might end up with too many complaints. Hence, it may be necessary to be more restrictive on admissibility issues in future.[138]

It is also remarkable that the Committee, in the above case, allowed a complaint relating the ineffective application of a right in practice, rather than a failure to implement law.[139] This must be said to be a worrying factor for the member states.

NGOs can only bring complaints in matters governed by the Charter, if they have particular competence to do so.[140] This provision could have the effect that NGOs right to complain is restricted. On the other hand, it could also have the effect that a large number of NGOs will be able to complain. It could be imagined that any individuals could join in a group of a certain purpose, which could be recognised under the Charter as an NGO with a "particular competence".[141] Therefore, it could be a problem that a large amount of NGOs as well as individuals, gathering in groups for the purpose to be able to complain had a right to bring a collective complain to the Secretary General.

4.2.1.3. The Faroe Islands and the collective complaints procedure

There are both advantages and disadvantages with the new system of collective complaints. What is important for the Faroe Islands, which is about to decide whether or not the territory should become a member of the European Social Charter or not, is the fact that there are not too many obligations to fulfil in the beginning.

It is especially the ability of NGOs to file a complaint that is worrying. It could be a problem, if the Faroe Islands, even before they have had a chance to adjust to the demands arising from the European Social Charter, was

[138] Holly Cullen, The Collective Complaints Mechanism of the European Social Charter, 2000, p. 3.
[139] Holly Cullen, The Collective Complaints Mechanism of the European Social Charter, 2000, p. 4.
[140] Article 2 paragraph 1 of the Additional Protocol of 1995 providing for a system of collective complaints.
[141] Holly Cullen, The Collective Complaints Mechanism of the European Social Charter, 2000, p. 4.

overwhelmed by complaints from both NGOs and Social Partners on the Islands. If we do not comply with articles of the original Social Charter, it is more difficult to keep up with the complaints procedure than with the supervisory mechanism.

Furthermore, it can be said that the need for NGOs and Social Partners to complain is not that big on the Faroe Islands. The country has a good and stable structure concerning the right to organisation. Therefore, it must be concluded that it is not advisable that the Faroe Islands ratify the Additional Protocol of 1995 or article D of the revised Charter. Especially not article 2 paragraph 1 in the Additional Protocol of 1995.

It could be suggested, that the Faroe Islands first ratified the original Social Charter, and if the country could cope with this situation, it could later on consider to ratify the collective complaints procedure.

5. Conclusion

The purpose of this article was to find out whether the Faroe Islands should ratify the European Social Charter or not and, if so, to which extent the Faroe Islands should ratify the Charter, that is which articles of the Charter should be ratified and whether the Faroe Islands should ratify the original Charter of 1961 or the Revised Charter of 1996.

The conclusion will only be based on the Faroese compliance with the key articles of the original Charter, as it has not been possible to examine all the Charter articles and its Additional Protocols, because of the length allowed for this article. It could be recommended that the Faroese Government made a similar empirical research of all the Articles in the original Charter and at least the 1988 Additional Protocol, before ratifying the Charter.

However, it is conceivable to arrive to a reasonable conclusion and a recommendation built on the empirical research made for this article. It can be stated which of the key articles the Faroe Islands can be expected to comply with and which not. The Faroe Islands can be expected to be in compliance with all three paragraphs of article 1 of the Charter, Article 6 paragraph 1, 2 and 3, Article 12 paragraph 1, 2 and 3 and Article 13 paragraph 2 and 3.

On the other hand, the Faroe Islands may not be in compliance with article 5 and article 6 paragraph 4 because of the fact that certain kinds of civil servants are not allowed to strike. Concerning article 6 paragraph 4 there

could also be a problem concerning the cooling-off periods that are required in regard to collective action. Similarly, there could be a problem concerning Article 12 paragraph 4 concerning equal treatment for the nationals of other Contracting Parties with respect to social security and Article 13 paragraph 1 concerning the 6 weeks waiting period before citizen from other member states of the Charter can get treatment from the Faroese health system and paragraph 4 concerning equal treatment of citizen of the member states in regard to social and medical assistance. Finally, it is doubtful whether the Faroe Islands are in compliance with Article 16 of the Charter concerning family benefits, kindergarten places for children, housing policy.

From the above mentioned it can be concluded that it will not be without difficulty for the Faroe Islands to ratify the European Social Charter. The supervisory mechanism of the Charter is very efficient. The European Committee of Social Rights follows carefully the development in the member states through reports submitted by the states. If a member state does not comply with the Charter provisions or with the case law developed by the European Committee of Social Rights, the Committee of Ministers will give recommendations to the member state. The recommendation is not legally binding, however it can be said, that when the country in question is Denmark, which is very conscious about fulfilling all international obligations, especially on the social front, recommendations from the Committee of Ministers will be taken very seriously.

If the Faroe Islands ratify the Charter without being in compliance with a large amount of Articles, there are going to be many recommendations from the Committee of Ministers. As it is Denmark, which represents the Islands in foreign affairs, it will be the Danish Government that receives the recommendations. Hence, the Faroe Islands have to show particular care when ratifying the Charter, so that Denmark is not getting more burdened than it already is concerning the compliance with the Charter.

Apart from this, ratifying the Charter would mean a larger workload for the Faroese administration. The work of gathering information, questioning relevant Ministries, public institutions and private organisations for the purpose of the reports is time consuming. If the information from the member countries is not thorough enough, the Committee can at any time ask for further information or elaboration on particular matters. Furthermore, a considerable amount of laws and case law would have to be changed for the Faroe Islands to comply with the Charter.

Even if the Faroe Islands would be in breach of many of the key Articles and ratification would mean a larger workload for the Faroese administration, it can be said to be a pity if the Faroe Islands did not ratify the Charter at all, as it contains many advantages. If the Faroe Islands ratifies the Charter, it would strengthen social rights on the Islands. It would be possible to a greater extent to focus the minds of the Parliament and Government on social rights of the citizens. The authorities would have to consider social rights and improve the legislation and practice concerning these rights, or else they would receive recommendations from the Committee of Ministers, which would not be seen well on the Faroe Islands. By ratifying the Social Charter, the Faroe Islands would be figuratively closer to the Council of Europe, as reports concerning the compliance of the Social Charter continuously would be sent to the Islands and would arise the awareness of international social rights on the Faroe Islands. It would be possible for the Faroe Islands to compare themselves and get new ideas from the social systems in the other member states.

The European Social Charter is one of the two basic and most important instruments of the Council of Europe, which 28 out of the 41 member states have ratified. It can be assumed, that it means something for countries internationally to have ratified the Social Charter. To ratify the Charter could give the Faroe Islands more credibility and respect in the international society, as the other member states of the Council of Europe would know that the Faroe Islands are a developed welfare society complying with many of the key articles of the Charter.

As concluded in chapter 2, it is not necessary for the Faroe Islands to ratify at least 5 key articles and at least 10 articles or 45 paragraphs, as the member states of the Council of Europe have to do when they ratify the Charter. As the Faroe Islands are a part of Denmark, the Islands can ratify only the articles or paragraphs that they wish to be bound by. This has been done in the Netherlands, where the Antilles and Aruba have only ratified 4 Articles of the original Charter and 1 Article of the Additional Protocol of 1988.

Therefore, it could be recommended that the Faroe Islands ratify a part of the Social Charter. The Faroe Islands could ratify the key Articles mentioned above, with which the Faroe Islands are in compliance. Subsequently, the Islands could work towards complying with the other key Articles, by passing new legislation and changing present practice, so that

the Faroe Islands would be in compliance with all the key Articles of the Charter. In the mean time, this process would raise the awareness of social rights in the society as a whole.

Another aspect, which should influence the Faroese ratification is the circumstances concerning the effect of international treaties on the Faroe Islands as discussed in chapter 2. Because of the fact that it is not clear whether a treaty has direct effect on the Faroe Islands or not, it should be recommended that the Faroe Islands are particularly careful when ratifying treaties. This speaks in favour of a Faroese ratification of the key Articles, which the Faroe Islands are in compliance with.

As stated in chapter 2 the Faroe Islands have the possibility to ratify Articles which Denmark has not ratified. As this article has only focused on the key articles ratified by Denmark, it is not possible to conclude whether some of the Articles that Denmark has not ratified would be useful to ratify on the Faroe Islands because of the special circumstances on the Islands. However, it could be recommended that this possibility is examined by the Faroese Government in case of ratification of the Charter.

The next question is whether the Faroe Islands should ratify the revised Charter or not. As mentioned in chapter 2, it is not likely that the Faroe Islands can ratify the revised Charter, if Denmark has not ratified it. However, it might not be long before Denmark ratifies the revised Charter and at that period of time it would be practical if the Faroe Islands know whether or not they should ratify the revised Charter.

The key Articles of the revised Charter are very similar to the key Articles of the original Charter. Some of the Articles are amended, but not in a way that the contents of the Article is changed substantively. If Denmark ratifies the revised Charter, it could be recommendable for the Faroe Islands to ratify the corresponding Articles as it would have ratified in the original Charter. That is all three paragraphs of article 1 of the Charter, Article 6 paragraph 1, 2 and 3, Article 12 paragraph 1, 2 and 3 and Article 13 paragraph 2 and 3.

However, it is advisable not to ratify Article 12 paragraph 2, which requires the ratifying state to maintain a social security system at a level at least equal to that necessary for the ratification of the European Code of Social Security. It is likely that Denmark will make a reservation concerning this

paragraph, as they do not presume that they will comply with the it. Hence, there is little doubt that the Faroe Islands will not comply with it.

If the Faroe Islands ratify parts of the revised Charter, the Islands have to consider whether they should ratify the collective complaints procedure as well. There are both advantages and disadvantages with the new procedure. The procedure will lead to the fact that social partners and NGOs will have the possibility to file complaints concerning breach of the rights set forth in the Charter to the Secretary General of the Council of Europe. Seen from a Faroese point of view, it could be a problem it the Islands, even before they have had a chance to adjust to the demands arising from the Charter, to be accused for breach of the Charter of social partners and NGOs.

It can be held, that it would be a better solution for the Faroe Islands, first to ratify certain Articles of the Charter and then, when the time was ready for it, the Faroe Islands could ratify the collective complaints procedure.

It can be concluded that it is advisable that the Faroe Islands ratify the Articles of the original Charter, which the Islands are in compliance with, being all three paragraphs of article 1 of the Charter, Article 6 paragraph 1, 2 and 3, Article 12 paragraph 1, 2 and 3 and Article 13 paragraph 2 and 3. If Denmark subsequently ratifies the revised Charter, the Faroe Islands could ratify the corresponding Articles in the revised Charter. Although, the collective complaints procedure, should first be ratified when the time is ready for it.

Kári á Rógvi[1]

Fíggjarvald, fíggjarlóg og fíggjarrættur[2]

1. Stjórnarlóg Føroya
2. Fíggjarlógin
3. Galdandi ásetingar
4. Atlitini innan fíggjarvaldið
5. Dømi: lógin um landsbankan

English Summary
Title: The Finance Powers, the Budget and Fiscal Law (the title plays on the prefix 'figgjar', meaning 'financial', appearing in these terms in Faroese. The article surveys the origins of the constitutional provisions on budget and financial matters in the Faroe Islands. Especially the term 'Finance Law' instead of 'Budget' is traced back to creative copying by a Danish bishop in the revolutionary confusion of Denmark in the year of 1848. The current provisions are analysed with the intent of finding out how appropriate and fitting they are in todays sircumstances with a substancially different and larger public sector compared to the times when the constitutional budget provisions were originally drafted. The author makes particular reference to independant and special agencies in finding out which substantial criteria can actually be deduced from the constituional

---

[1] Lógkønur, bac. og cand. jur. frá København og LL.M. frá Aberdeen. Limur í FLR ritstjórnini. Advokatfultrúi hjá Faroe Law.

[2] Ritið byggir á eitt rit, sum Kári á Rógvi hevur latið landsbankanum um óheftar landstovnar. Partar endurbýttir við loyvi frá landsbankanum.

text. Finally, the article dwells on the Faroese National Bank as a case study of the misconceptions and flawed analysis that an over reverence for the letter of the constitutional texts can lead to. Included are for good measure the equivalent Sweedish provisions that have been changed to reflect, in the auther's opinion, a proper modern understanding of constituional provisions on the National Budget and the Finance Powers.

Føroyskt Úrtak

Greinin lýtur at upprunanun til ásetingarnar um figgjarætlan og figgjarvald í stýrisskipanarlógini. Serliga verða hugtakið 'figgjarlóg' ført aftur til at dansku bispur sera skapandi skrivaði av nakrar ásetingar undir ruðulleika og kollveltingardámi í 1948. Verandi ásetingar verða greinaðar við tí fyri eyga at finna fram til, hvussu hóskandi og egnaðar tær eru á okkara døgum við týðandi broyttum og vaksnum almennum sektori samanborið við tíðina, tá hesar ásetingar vórðu av fyrstun tíð ritaðar. Høvundin hggur serliga at serligum og óheftum stovnum, tá hann leitar fram tey atlit, ið veruliga kunnu útleiðast frá stjórnarásetingunum. At enda tekur greinin fram Landsbankan sum dømi um, hvørjar misskiljingar og skeivar analysur sum ein ov bókstavatrúgv tulking kan viðføra. Hjálagdar eru til tess at seta trumf á tær sambarligu svensku ásetingarnar, ið eru broyttar, eftir høvundans meting, so at tær endurspegla eina skilagóða nútíðar fatan av stjórnarásetingunum um landsins figgjarætlan og figgjarvald.

Stjórnarlóg Føroya

Stjórnarlóg Føroya er tíverri ógreið. Týdningarmesta keldan er yngra stýrisskipanarlógin. Henda lóg hevur tó tað brek at vera sera nær at donsku grundlógini í orðaljóði. At tulka hana er tí at skákasigla millum danska siðvenju og føroyska fatan. Við hava eisini føroyska siðvenju (praksis). Trupulleikin við henni er, at helst ongir dómar verða sagdir um hana, og eru føroyskir dómar í øllum førum ringir at finna. Eins fáar og torgreiddar eru aðrar týðandi tulkingar, tí ongin almannakunnger fyrisitingarligar avgerðir, og siðvenjur verða ikki lýstar. Støðan gerst ikki betur, tá ongin skipað gransking og nærum onki fakligt orðaskifti er innan lóg í Føroyum. Eisini er ein vansi, at hvørki tingnevndir ella tingið í plenum gera greiðar niðurstøður, ið kunnu nýtast sum týðandi tulkingar.

Munur er eisini á føroyskari siðvenju og danskari. Til dømis hava Føroyar ta siðvenju at leggja uppskot um eykajáttanarlóg fyri tingið hvønn mánaða. Í Danmark verður tikið samanum eina ferð um árið, meðan figgjarnevndin tekur støðu til játtanir í árinum. Í Føroyum veitir figgjarnevndin bert játtan,

um mál hava skund. Danska siðvenjan skilur ímillum prinsippielt og ikki-prinsippielt, heldur enn skund og ikki-skund. Vert er at leggja til merkis, at í Danmark víkur siðvenjan frá ásetingunum í grundlógini, serliga í partinum um fíggjarvald. Tí er tað so trupult at samanbera ásetingarnar í grundlóg og stýrisskipanarlóg.

Stórur váði er í hesum, at keldurnar vanta, serliga tá vit fáast við ógvuliga tekniskar spurningar. Fíggjartátturin er altíð millum truplastu partarnar í stjórnarlóg, og so er eisini hjá okkum.

> Um henda vanda sigur Peter Germer:
> "Forfatningsretlige udredninger, der baseres på unuancerede retsteoretiske betragtninger, kan let få karakter af bevillingsretligt dilletanteri. Der er grund til at understrege, at en forfatningsretlig bedømmelse af konkrete budgetproblemer kræver indgående kendskab til bevillingsmyndighedernes praksis."[3]

Fakligar Metingar
Orðaskiftið millum løgfrøðinga um heimildina at lata landstovnum gjaldføri útyvir nettojáttanina vísir, hvussu vandamikil ein ónuansera tilgongd er.

Stríðið stóð um góða hálva aðru millión krónur, Signar á Brúnni landstýrismaður ávísti Sjónvarpi Føroya Í JULI 1999. Orrustan var fyri mesta partin politisk, stríð innanhýsis í tjóðveldisflokkinum, stríð millum fíggjarnevndina og landstýrismannin, og fyrisitingarliga marknastríðið millum fíggjarmálastýrið og fakstýrini um fíggjarligu mannagongdirnar. Endin var, at Signar tók seg úr sessinum og løgtingið setti kanningarstjóra at kanna og kortleggja hendingarnar.

Petur Even Djurhuus[4] advokatur vísti í frágreiðing síni á, at heimild var fyri at ávísa upphæddina eftir stýrisskipanarlógini og játtanarskipanini.

Eg haldi niðurstøðan var røtt. Tann parturin av frágreiðingini, sum viðgjørdi lógspurningin, var nakað stuttur og tepur – tí svarið var ikki samberandi við støðuna aðrarstaðni ella problematiserandi við at vísa á ymsar hugsandi loysnir og avleiðingar teirra. Men svarið uppá spurningin var rætt, haldi eg. Afturfyri var tann setti spurningurin óheppin. Løgtingsformaðurin Finnbogi Ísaksson orðaði spurningin soleiðis, at svarið kundi illa vera annað enn gott

[3] Peter Germer Statsforfatningsret, 2. udg. 1995, p. 141.
[4] Sí www.logting .fo vel tingnevndir/landstýrismálanevndina/kanningarstjóramál/J.nr. 1111.20000001/C.

fyri Signar á Brúnni. Hetta var politiskt snildi, men sera óheppið fyri lógkunnleikan.

Spurningurin var í stuttum: "Kanningarstjórin skal kanna og kortleggja gongdina, sum førdi til at landstýrismaðurin [rindaði 1,6 mio. kr. 23. juli 1999]... [og] meta, um avgerðin hjá landstýrismanninum var í samsvari við tær lógir og reglur, sum eru galdandi fyri útgjaldi úr landskassanum, herundir ta játtanarskipan, sum er ásett í fíggjarløgtingslógini."

(Tann gløggi lesarin varnast beinanvegin, at løgtingsformaðurin orðar spurningin sum um játtanarskipanin er ásett í sjálvari fíggjarlógini. Tað er hon ikki; hon er eitt skriv frá fíggjarmálastýrinum, sum tingið letur hanga uppií síni fíggjarætlan. Orðingin vísir, hvussu trupult tað er at halda skil á lógkeldunum innan fíggjarvaldið.)

Fyrra partin av setninginum greiddi Petur Even við eini frágreiðing um gongdina í málinum.

Seinna partin svaraði Petur Even við at vísa á millum annað:

- Landstýrismaðurin skrivar saman við deildarleiðara undir ávísingarskjal á ialt kr. 1.652.349,67.
- Tær ávístu útreiðslurnar eru lønir og gjøld fyri sjónvarpsrættindi.
- SvF hevði ikki gjaldføri at greiða hesi gjøld.
- Fíggjarnevndin hevði avvíst at greiða málið við einum fíggjarnevndarskjali.
- Undirvísingar og mentamálastýrið hevði eftir 23. juli 1999 játtanareftirlit við rakstrinum hjá SvF, og disponeraði sum at játtanin hjá SvF skuldi haldast.

Kanningarstjórin metir tí, "at útgjaldið tann 23. juli 1999 var fyri at greiða gjaldførar skyldur... samstundis sum UMMS' er greitt, at endaligi játtanarkarmur fyri árið 1999 skal haldast."

Víðari sígur hann, at:

- út frá viðmerkingunum til fíggjarlógina og ásetingum í játtanarskipanini er virksemið hjá SvF beinleiðis játtað og heimilað á fíggjarlógini.
- ávístu útreiðslurnar liggja innanfyri endamálið við viðkomandi konto á fíggjarlógini.
- tað er ikki ásett neyvt, hvør upphædd er játtað til útreiðslur; tá SvF bert í rkastri sínum skal uppfylla nettojáttanina.

- Nettojáttanin kr. 0 merkir bert, at raksturin ikki má geva hall.
- UMMS hevur havt fyri eygað, at nettojáttanarkarmurin skuldi haldast, og at upphæddin í støddd tí lá innafyri játtanarupphæddina á fíggjarlógini.

Kanningarstjórin metir tí, at "at avgerðin... var í samsvari við tær lógir og reglur, sum eru galdandi fyri útgjaldi úr landskassanum, herundir [játtanarskipanina]."

Tað, sum tingið ikki spurdi – og Petur Even tí ikki svaraði – var millum annað:

- Hevði landstýrismaðurin røkt eftirlitisskyldu sína við SvF undan 23. juli 1999?
- Nær og hvussu skuldi landstýrismaðurin havt boðað tinginum frá, at hann fór at ávísa upphæddina 23. juli 1999?
- Var tað veruliga rímiligt at meta, at nettojáttanin kundi haldast, serliga tá trupulleikar at gjalda lønir vanliga eru sera ringt tekin um støðuna hjá eini fyritøku?
- Hvat er neyvara sambandið millum gjaldføri og játtan, tvs. hvussu nógv kann ein stovnur trekkja uppá landskassan í mun til játtanini, og undir hvørjum treytum, serliga treytum til at tað er veruliga væntandi (realistiskt), at nettojáttanin fer at halda?

Tað, sum tingið ikki spurdi, og heldur ikki á annan hátt nýtti høvi at taka upp var millum annað:

- Hvør politisk ónøgd var við Signar á Brúnni millum tingmenn (eitt nú um málið um at seta í gildi fleiri krikjulógir).
- Hvør politisk ónøgd var innanfloks ella í samgonguni við Signar á Brúnni og hansara politiska virksemi.

Mest av øllum vantaði, at tingið segði sína hugsan, um tingið var ónøgt við tað, sum Signar á Brúnni gjørdi, sjálvt um tað var lógligt. Við øðrum orðum, reglan í § 30 í stýrisskipanarlógini merkir, at tingið kann siga: vit ásanna, at tú kanst gera soleiðis, men gert tú tað seta vit teg frá.

Ístaðin fyri at tingið tók niðurstøðuna um tað lógliga til eftirtektar, men síðani tók støðu til, hvussu tingið vilda hava siðvenjuna at vera í slíkum førum, so gjørdi tingið onki, og fólk flest fingu tað fatan, at Signar á Brúnni var reinsaður og átti at fáa sessin aftur. Spurningurin um landstýrissessin er ein politiskur spurningur, sum er óheftur av tí smala lógarspurninginum, sum løgtingið setti kanningarstjóranum.

Álopini á frágreiðingina frá Bjørn á Heygum, advokati, vóru fundamentalistisk í síni hugsan og sera bonsk í formi. Harvið kvaldist alt sakligt orðaskifti í føðingini. Tíverri hava fíggjarnevndin og tingið heldur ikki gjørt sína støðu greiða – hvørki juridiskt ella politiskt.

At tað fakliga orðaskiftið er so avskeplað er sera harmiligt. Tað er jú út frá teimum prinsippum, sum vit kunnu útleiða frá atburði ella siðvenju (praksis), og innanfyri teir karmar, sum ásetingarnar í stýrisskipanarlógini seta, at vit skulu finna loysnirnar. Men tá tað fakliga orðaskiftið illa kann endurgevast á prenti, og politisku stovnarnir ikki taka nakra støðu, er ivasamt, um tað ber til at gera annað enn at kanna stýrisskipanarlógina.

Siðvenja
Tað er ikki altíð, at tey lógkønu gera sær greitt, hvønn týdning siðvenja hevur á ymsum lógarøkjum.

Orðaljóðið í stjórnar*ásetingum* er ofta tilvildarliga vorðið tað, tað er, og má tulkast og fyllast í siðvenju. Tær føroysku reglurnar, ið skipa fíggjarvaldið við eini fíggjar*lóg*[5], heldur enn eini fíggjar*ætlan,* hava sín uppruna í teimum donsku, sum aftur er læntar úr teirri belgisku grundlógini miðskeiðis í 19. øld. Ditlev Tamm greiðir frá hesum soleiðis:

> "Rammen om det fremtidige forfatningsliv blev her som andetsteds til ved afskrivning af forfatningsbestemmelser fra andre lande. Det stod den unge teolog D.G. Monrad for. Han var ganske ukyndig i forfatningsret, og begivenhederne kom så overrumplende, at han knap var forberedt. Men han viste sig en formidabel stilist og også en politisk begavelse af dimensioner. Han havde god hjælp af en netop udkommet samling af udenlandske forfatninger i dansk oversættelse."[6]

Tær formligu reglurnar áttu tí ikki at verið tann týdningarmesta ella altavgerandi lógkeldan. Heldur eru ásetingarnar í stýrisskipanarlógini nakrir karmar, sum gera fleiri ymsar siðvejur møguligar. Tað er upp til politisku stovnarnar at avgera, hvørja av teimum møguligu siðvenjunum, vit velja. (Í Danmark er enntá semja um, at siðvenjan á fíggjarøkinum víkir frá orðaljóðinum í grundlógini).

[5] Kaare R. Skou Demokratiets Danmarkshistorie 1999, p. 1849/2.
[6] Ditlev Tamm Den danske grundlov og europæisk retskultur, Folketingets Festskrift 1999 p 33.

Um týdningin hjá siðvenjuni innan fíggjarvaldið vísir Peter Germer á, at í lógini um statsrevisión og lógini um statsrevisorarnar verður álagt revisiónini at kanna millum annað, at alt er farið fram eftir "sædvanlig praksis". Sama er galdandi í Føroyum sambært lóg um grannskoðan av landsroknskapinum (ll. 25/99). Í § 4, stk. 3 stendur: "samsvarandi... vanligum siði".

Peter Germer sigur um siðvenjuna viðvíkjandi fíggjarætlan landsins:

> "Retsgrundlaget for statsbudgettet består ikke udelukkende af skrevne regler, men også af uskrevne bevillingsmæssige principper, som har udviklet sig i praksis med Folketingets finansudvalg som hovedredaktør... Tinget har i vidt omfang overladt den retsfastsættende funktion til finansudvalget, således at finansudvalgets praksis får afgørende bevillingsretlig betydning."[7]

Hjá okkum er tíverri so, at henda praksis er ring at koma at. Tað eru ov nógv fakstovnarnir, ið hava initiativið, og ov lítið tingið og fíggjarnevndin, ið taka støðu til tilmælini frá fíggjarmálastýrinum, landsgrannskoðaranum og løgtingsskrivstovuni. Ilt er at síggja, nær landstýrið, tingið ella fíggjarnevndin sum teir politisku stovnarnir hava tikið eina støðu. Heldur síggja vit eina avgjørda støðutakan uttan nærri grundgeving. Tess meiri orsøk er at viðgera, *hvussu siðvenjan eigur at taka seg upp.*

Okkum tørvar eina samskipaða kanning av føroyskum fíggjarrætti, lógini innan fíggjarvaldið. Henda kanning má taka atlit til allar tær sera ymisku lógkeldurnar, sum eru í fíggjarrættinum. Hetta rit kann kanska fáa onkran annan at fara undir slíka nágreiniliga kanning.

Keldurnar[8] til føroyska fíggjarvenju verða at finna í fíggjarlógum, nevndaravgerðum; játtanarskipan, niðurstøðum og frágreiðingum frá landsgrannskoðara, landsbanka, búskaparráði og tinggrannskoðarum, dómum, fyrisitingarligum avgerðum og øðrum við. Í eini demokratiskari skipan mugu tað tó vera politisku stovnarnir, ið endaliga prioritera millum teir fyriliggjandi møguleikarnar. Serliga er tað hægsti dómstólurin, ið eigur at avgera tulkingarspurningar. Løgtingið, ella fíggjarnevndin tess vegna, eigur at velja millum ymsar hugsandi siðvenjur.

[7] Peter Germer Statsforfatningsret, 2. udg. 1995, p. 140.
[8] Samanber Henrik Zahle Dansk forfatningsret, bind 2, 1989, p. 247.

Undir verandi umstøðum við eini rættiliga nýggjari stýrisskipanarlóg og eini torgreiddari fíggjarvenju, noyðist eg fyrst og fremst at byggja á stýrisskipanarlógina og motivir hennara.

Játtanarskipanin
Í teirri dagførdu fíggjarlógini, sum fíggjarmálastýrið hevur givið út, standa aftast ein stutt frágreiðing um játtanarskipan, vegleiðing um fíggjarlógaruppseting, og kontoskipan á fíggjarlóg.[9]

Sum frágreitt omanfyri er ilt at vita, um hetta eru ynski frá fíggjarmálastýrinum um, hvussu reglurnar áttu at verið, ella um veruliga siðvenju, sum demokratisku stovnarnir hava tikið eina grundaða og reflekteraða støðu til.

Sum dømi í viðgerðini niðanfyri velji eg at viðgera teir stovnar, ið liggja á markinum millum alment og privat ella á markinum millum almennar stovnar og sjálvsognarstovanr og tílíkt. Vit hyggja fyrst at punkti 5.6 í játtanarskipanini, 'Játtanarslagið landsfyritøka'[10], ið verður lýst soleiðis:

"*Landsfyritøka* verður nýtt, tá virksemið hjá almennum stovni í høvuðsheitum er vinnuligt..."

Síðani er eisini 5.7 'Onnur játtan', sum – kanska ikki óvæntað – verður lýst so: "Vanliga verður hetta játtanarslagið nýtt, tá hini játtanarsløgini ikki røkka"[11].

At tað eru serligir myndugleikar ella serligir stovnar, hvørs støða er stjórnarliga ella fyrisitngarliga óheft – uttan at talan er um vinnuligt virksemi – er farið aftur við borðinum hjá høvundunum. Hetta sjálvt um vit hava eina røð av serligum stovnum sum ALS, landsbanka, Útvarp Føroya, osfr., hvørs rakstur ikki er vinnuligur, men heldur non-profit ella grundaður á atlit til fíggjarpolitikk ella annan politikk landsins í breiðastu merking. ALS skal javnað pengar millum góðar og ringar tíðir, millum arbeiðsleys og tey við arbeiði. Landsbankin hevur ábyrgdina av stórum pørtum av fíggjar og búskaparpolitikki landsins. Útvarpið skal flyta tíðindi, óheft av landstýrinum.

[9] Fíggjarmálastýrið Løgtingsfíggjarlóg, Tekstur og viðmerkingar (Dagførd), p. 357, 365, 369.
[10] Fíggjarmálastýrið Løgtingsfíggjarlóg, Tekstur og viðmerkingar (Dagførd), p. 363
[11] Fíggjarmálastýrið Løgtingsfíggjarlóg, Tekstur og viðmerkingar (Dagførd), p. 363

Játtanarskipanin sigur tí ikki so nógv um óheftar stovnar. Støða átti at verið tikin til, um hon skal broytast, so ein nýggj kategori 'serligir óheftir fyrisitingarstovnar' ella líknandi skal skoytast uppí. Sjálvur vildi eg tó mælt til eina tinglóg um játtanarskipan, so var ongin ivi um demokratiska legetimitetin, og heldur ongin ivi um støðuna hjá hesum reglum mótvegis øðrum tinglógum.

Fíggjarlógin

Í veruleikanum er tað óheppið, at vit hava skrivað av úr donsku grundlógini, sum á tí økinum var skrivað av belgisku grundlógini. Hetta hevur ført við sær, at vit talað um 'fíggjarlóg' heldur enn 'fíggjarætlan' ella 'budget' sum teir siga aðrastani. Á svenskum: budgetreglering, statsbudgeten[12]. Á norskum: statsudgifterne, statsbudsjett.[13]

At seta fíggjarætlan landsins upp í §-formi er fíggjarfrøðiliga løgið, og er løgfrøðiliga sera óheppið. Tær óhepnu avleiðingarnar síggjast serliga, tá ræður um tær materiellu ásetingarnar í fíggjarlógini.

Fíggjarlógin kann til dømis seta nýggjar stovnar á stovn, avtaka aðrar, broyta ella stovna heimildir. Hetta átti ikki at verið so, fíggjarlógin átti einans at verið fíggjarheimild. Tann materiella ella innihaldsliga heimildin skuldi ligið aðrastaðni, í eini heimildarlóg fyri seg.

Fíggjarlógin eigur tí eftir míni fatan ikki at roknast sum ein vanlig lóg, men heldur sum eitt amboð hjá fíggjarvaldinum. (Tó er ongin ivi um, at tingið frmavegis formelt kann lóggeva við fíggjarlógini, eisini broyta aðrar lógir).

Fíggjarlógin sum fíggjarætlan ella budget varð sett á stovn, tá Danmark fór frá einaveldi til eina demokratiska skipan. Áðrenn grundlógina bar altíð til hjá kongi at brúka teir pengar, honum lysti, tað verði seg til rakstur ella íløgur. Ein týðandi partur av tí parlamentariska stríðnum hevur altíð verið stríðið um fíggjarvaldið. Hvør kann áleggja skatt, og hvør kann játta útreiðslur?

Grundleggjandi ætlanin við fíggjarlógini er at tryggja, at hetta fíggjarvaldið skal liggja hjá fólkavalda tinginum, samstundis sum tingið fær møguleika at halda eyguni við, hvussu fíggjarlógin verður útint.

---

[12] Svenska stjórnarskipanin 9 Kap 3 §.

[13] Norska grundlógin §75, d. Johs. Andenæs Statsforfatningen i Norge, åttende udgave 1998, p. 225.

Tað avgerandi atlitið í øllum fíggjarrætti er tí, at ongar útreiðslur skulu fara fram uttan at tær hava demokratiskan legitimitet.

Tað rættasta í samsvar við fíggjarlógina var tí, at heimildarlógir ikki innihildu játtan – at pensjónslógin t.d. víst til fíggjarlógina viðv. upphæddunum, og at fíggjarlógin vísti til heimildarlógina viðvíkjandi útgjaldsheimildini og fyrisitingarheimildini.

Men tað mest realistiska er tó helst ein pragmatisk millumloysn. Men nettupp tí vit ikki halda okkum til orðaljóðið í stýrisskipanarlógini, men heldur stýra ímóti eini pragmatiskari millumloysn, ber ikki til kategoriskt at krevja, at alt skal á fíggjarlógina. Tað er umráðandi at skilja, hvørji tey reellu atlitini eru.

Demokratiskt Eftirlit
Poengið í ásetingunum um fíggjarvaldið er ikki, at *ongin* almenn útreiðsla skal kunna avhaldast uttan at játtan er undan ella at *ongin* almenn útreiðsla skal vera uttan at standa á fíggjarlóg. Poengið er hinvegin at ongin útreiðsla skal vera uttan *demokratisk eftirlit*. Hetta merkir, at so ella so skulu allar almennar útreiðslur legitimerast so nær at veljaranum sum gjørligt og vera undir støðugum eftirliti frá valdum umboðum so nær at veljaranum sum gjørligt.

Galdandi ásetingar
Hyggja vit at okkara egnu stýrisskipanarlóg síggja vit hesar ásetingar ('[...]' eru styttingar):

> Fíggjarmál landsins
> § 41. [Eingin skattur uttan við løgtingslóg.]
>
> § 42. Lán ella borgan o.a.m, ið skuldbindur løgting, landstýri ella stovnar undir landinum, kann ikki verða tikið ella veitt uttan við heimild í løgtingslóg.
>
> § 43. Fyri 1. oktober á hvørjum ári leggur landstýrið fyri løgtingið uppskot um løgtingsfíggjarlóg fyri komandi álmanakkaár.
> Stk. 2. [Eingin útreiðsla má verða goldin, uttan at heimild er fyri henni í teirri fíggjarlóg, ella aðrari játtanarlóg, ið er í gildi, tá ið ávíst verður.]
> Stk. 3. [bráðfeingis játtanarlóg.]
>
> § 44. [Eykajáttan verður veitt við løgtingslóg.]

> Stk. 2. [Um mál hevur skund, kann løgtingsins fíggjarnevnd veita eykajáttan]
>
> § 45. [Landskassaroknskapurin skal verða lagdur fyri løgtingið]
> Stk. 2. [Løgtingið velur nakrar grannskoðarar.]
> ...
> Stk. 4. Reglurnar í stk. 1-3 verða eisini nýttar fyri roknskapir hjá almennum stovnum, sum hava sjálvstøðugan roknskap.

At fíggjarmál hava heilar 5 ásetingar av teimum 58 í stýrisskipanarlógini sigur eisini, at talan er um annað enn bert eina grein av lógávuvaldinum, men heldur eitt veruligt vald, *fíggjarvaldið*.

Landstýrið vísti í viðmerkingum sínum til uppskotið um stýrisskipanarlógina til viðmerkingarnar hjá nevndini, ið gjørdi stýrisskipanarálitið.[14] Samtykta stýrisskipanarlógin tykist eisini byggja á hesar viðmerkingarnar.

Í viðmerkingunum hjá nevndini til § 45, stk. 4 um stovnar við sjálvstøðugum roknskapi stendur:

"...Í stk. 4 er ásett, at reglurnar eisini eru galdandi fyri landstovnar, sum hava sjálvstøðugan roknskap, t.d. telefonverkið, apoteksverkið og rúsdrekkasølan."

Stýrisskipanarlógin byggir sostatt á, at nakrir landstovnar hava sjálvstøðugan roknskap. Hvørjir hesir eru, er ikki nærri greina, útyvir at trý dømi er nevnd. Í roynd og veru hava ein rød av stovnum havt hesa støðu.

Tað kann tykjast sum, at meiri sjálvstøðugir stovnarnir eru, og meiri 'vinnuligir' teir gerast, størri eru sannlíkindini fyri, at teir ikki eru at finna á løgtingsfíggjarlógini, men koma undir heitið 'landstovnur við sjálvstøðugum roknskapi'.

Til dømis eru vinnuligu grunnarnir, framtaksgrunnurin teirra millum, ikki við á fíggjarlógini. Heldur ikki tað sera sjálvstøðuga jarðarráðið og hin tilknýtti jarðargrunnurin eru á fíggjarlógini, men hava sjálvstøðugan roknskap.

[14] Álit um stýrisskipanarviðurskifti Føroya 1994.

Tað kunnu soleiðis hómast vegleiðandi fyrilit fyri, hvør stovnur skal koma undir SL §45, stk. 4. Tað er tó helst upp til tingið sjálvt at avgera, um ein stovnur skal á fíggjarlógina ella hava egnan roknskap.

Tað avgerandi fyrilitið eftir stýrisskipanarlógini – og hetta er ein bindandi stjórnarrættarlig áseting – er at tingið fær roknskapin fyrilagdan. Harvið ber til hjá tinginum at røkja sína eftirlitiskyldu, og harvið verður forðað fyri, at landstýrið sjálvt kann vera upprunin til útreiðslurnar.

Talan skal vera um ein stovn, tvs. eina skipaða eind við egnari leiðslu og – sum dømini vísa – egnari heimildarlóggávu. Henda heimildarlóggáva setur saman við teirri sjálvstøðugu leiðsluni mark fyri, hvørjar útreiðslur kunnu verða framdar.

Tí er vert at leggja til merkis, at § 45, stk. 4 í veruleikanum loyvir almennum útreiðslum, sum ikki hava heimild í einari játtnarlóg. Játtanarheimildin liggur í tí avmarkaða endamálinum, ið tingið hevur samtykt, í skilnaðinum millum leiðsluna og landstýrið. Í hesum liggur eisini eftirlitið við og óhefti hjá viðkomandi stovni. Eftirlitið verður framt ígjøgnum serligar ásetingar í heimildarlógini og ígjøgnum grannskoðanina og roknskapargóðkenningina hjá løgtinginum.

Kommunurnar
Av áhuga er eisini ásetingin um lokala sjálvstýrið:

> Kommunurnar
> § 56. Rættur kommunanna at skipa egin viðurskifti undir eftirliti landstýrisins verður ásettur í løgtingslóg, m.a. í hvønn mun kommunur og millumkommunufelagsskapir kunnu skuldbindast við láni, borgan o.ø.m.

Kommunurnar eru undir demokratiskum eftirliti frá sínum egnu borgarum, fyrst og fremst. Tingið hevur tó eisini eitt demokratiskt eftirlit ígjøgnum tær almennu lógirnar um kommunal viðurskifti. Síðani hevur landsfyrisitingin eitt lógeftirlit.

Ógvuliga áhugavert er, at kommunurnar ikki eru á løgtingsfíggjarlógini.

Henrik Zahle skrivar um hetta:

> "Statens tilskud til kommunerne henføres [på finansloven], mens den øvrige kommunale økonomi falder udenfor for finansloven."[15]

Tað er bæði ynskiligt og legitimt at samskipa, men talan er um eitt valdsbýti á tí fíggjarliga økinum millum land og kommunur. Tann ynskiliga og neyðuga koordinatiónin, ið grundar seg á búskaparliga fatan, kann gerast ígjøgnum kommunallóggávuna og eftirlitið. Íløguhámark, skattahámark og líknandi kunnu – um tey ikki ganga kommunala frælsinum ov nær – tryggja búskaparligu samskipanina. Men tað er ikki neyðugt, og vildi eftir míni hugsan verið í stríð við stýrisskipanrlógina, at sett hvørja kommunu á fíggjarlógina. Búskaparliga kundi tað møguliga verið ynskiligt, men tað hevði gingið kommunala sjálvræðinum ov nær og tí verið í stríð við stjórnarskipan okkara, sum tryggjar kommunala sjálvræðið.

Vit síggja soleiðis, hvussu stovnar við serligari *originerari kompetansu*[16], ið eru undir tryggjandi demokratiskum eftirliti, umframt lógareftirliti, verða hildnir uttanfyri fíggjarlógina. Hetta hóast ein bókstavafatan av ásetingunum í stýrisskipanarlógini um fíggjarlógina kundi ført til, at 'ongin merkir ongin', og tí heldur ikki kommunurnar kundu verið undantiknar fíggjarlógini.

Serligir Almennir Stovnar

Ávísir stovnar eru undantiknir fíggjarlógini, tó at teir ikki eru nevndir í stýrisskipanarlógini og harvið hava eina originera kompetansu. Summir av hesum hava serligar uppgávur at røkja, ið gera óhefti teirra serliga týðandi. Harvið gerst tað meiri umráðandi at taka teir av fíggjarlógini.

Almennir fjølmiðlar hava eina uppgávu, ið er at tryggja almenna orðaskiftið og upplýsingina, sum er ein fortreyt fyri, at demokratiska stjórnarlagið heldur fram. Aðrir stovnar røkja eina serliga búskaparliga uppgávu.

Um slíkar stovnar skrivar Henrik Zahle:

> "Udenfor falder således Danmarks Radio, og visse fonde, som f.eks. Arbejdsmarkedets Tillægspension. Men betalinger mellem staten og sådanne institutioner fremgår selvsagt af finansloven. Dette omfatter f.eks. bloktilskud og procentrefusion til kommunerne og det statslige

[15] Henrik Zahle Dansk forfatningsret, bind 2, 1989, p. 223.

[16] Hugtakið merkir í stjórnarrætti ein stovnur, ið hevur eina heimild sambært stjórnarskipanini, ikki eina delegeraða ella avleidda heimild. Ein røð av stovnum eru soleiðis nevndir í stýrisskipanarlógini og kunnu tí ikki missa hesa heimild, uttan at stýrisskipanarlógin verður broytt.

> tilskud til folkekirken.... Aktieselskaber, hvori staten er aktionær er ikke omfattet af bevillingssystemet.... Statslige virksomheder... er undergivet en særstilling (nettosystemet), der tillader dem en friere dispositionsret."[17]

Tað er soleiðis ein glíðandi gongd frá meiri til minni játtanarintegreraðar stovnar.

- bruttojáttan til miðfyrisiting
- bruttojáttan til aðrar stovnar
- nettojáttan til almennar fyritøkur
- stuðul til serligar stovnar
- kommunalar eindir við egnari fíggjarskipan, ið fáa stuðul
- stovnar uttanfyri játtan

Vert er at leggja til merkis, at orsøkir eru fyri at halda stovnarnar uttanfyri, men at teir allir á sín hátt lúka tey grundleggjandi fyrilit, sum greidd eru frá niðanfyri.

Atlitini innan Fíggjarvaldið

Í hesum partinum hyggi eg at atlitum, ið við vissu eru partur av føroyskari stjórnarlóg og føroyskum fíggjarrætti. Eisini her eru tað stovnarnir á markinum, ið hava mín serliga áhuga.

Atlit ið komu fram Omanfyri

Av ásetingunum í stýrisskipanarlógini sæst eisini, hvat tað stýrisskipanarliga týðandi er:

- skattir mugu hava heimild í løgtingslóg og fíggjarlóg
- gjøld mugu hava heimild í lóg
- lán mugu hava heimild løgtingslóg
- útreiðslur mugu hava heimild í lóg ella heimildarlóg
- stovnar, ið hava fíggjarheimild uttan at vera á fíggjarlóg, mugu vera undir tingsins eftirliti hóast alt
- ymiskt er, hvat tilknýti serligir stovnar hava til fíggjarlógina, veruliga støðan hjá einum stovni eigur at byggja á meting í hvørjum einstøkum føri.

Fíggjarmeting og Fíggjarheimild

[17] Henrik Zahle Dansk forfatningsret, bind 2, 1989, p. 241.

Fíggjarlógin er partvís ein meting og partvís ein heimild. Meting fyri tær útreiðslur, sum hava heimild í aðrari lóg. Heimild fyri tær útreiðslur, hvørs upphav er sjálv fíggjarlógin.

Hetta er ofta rótin til nógvan forvikling. Henrik Zahle sigur um hetta:

> "Finanslovens sammenstilling af budgetskøn med egentlige bevillinger vanskeliggør, hvad det egentlig er, der tages stilling til med finansloven og dens vedtagelse. En adskillelse mellem normative og kalkulatoriske elementer ville svare bedre til almindeligt anerkendt lovteknik."[18]

Eitt gott dømi eru pensjónir. Har er heimildin, *játtanin,* pensjónslóg, meðan fíggjarlógin bert hevur eina meting um, hvussu nógvar útreiðslur pensjónslógin førir við sær.

Virksemi hjá óheftum landstovnum er heimilað í lóg, og hava teir inntøkur, ið standast av tí heimilaða virkseminum. Skulu teir krevja inn serlig gjøld, mugu tey vera heimilað í lóg, eins og t.d. útvarpsgjald og ALS gjald eru áløgd í ella sambært lóg – uttan tó at fara um fíggjarlógina.

Veruligur skattur – útreiðslur útyvir tað neyðuga at fíggja viðkomandi virksemi – má altíð á fíggjarlógina.

Búskapur

Johs. Andenæs sigur so beinrakið:

> "Noe helt annet enn statsbudsjettet er *nasjonalbudsjettet.* Mens statsbudsjettet gir et overslag over statens inntekter og udgifter i budsjetperioden, skal nasjonalbudsjettet gi et oversyn over hele samfunets økonomiske liv, og regjeringens syn på den økonomiske politikk.[19]

Óhefti

Við hvørt er neyðugt at tryggja, at stovnar eru óheftir av øðrum stovnum.

Hugsanin um valdsbýtið er í sjálvum sær eitt ynski um óhefti. Upprunahugsanin hjá monnum sum John Locke var, at skyldnaður skuldi vera millum *tann ið gjørdi regluna, tann ið tók avgerð (dømdi) eftir regluni* og *tann ið útinti avgerðina (dómin).*

---

[18] Henrik Zahle Dansk forfatningsret, bind 2, 1989, p. 223

[19] Johs. Andenæs Statsforfatningen i Norge, åttende udgave 1998, p. 226.

Tað, sum einamest uppfyllir hesa hugsan, er svenska reglan um óhefti hjá fyrisitingini:

> "11 Kap 7 § Ingen myndighet, ej heller riksdagen eller kommuns beslutande organ, får bestämma, hur förvaltningsmyndighet skall i särskilt fall besluta i ärende som rör myndighetsutövning mot enskild eller mot kommun eller som rör tillämpning av lag.[20]"

Í Danmark og í Føroyum er hinvegin útgangspunktið, at allar avgerðir verða tiknar í navninum á tí politiska myndugleikanum. Landstýrismenn kunnu tí persónliga taka allar tær avgerðir, sum eftir heimildarlóg liggja hjá embæti teirra.

Men, somikið størri er tørvurin í Føroyum at gera mun á teirri politisku og teirri fakligu fyrisitingini í einstøkum heimildarlógum.

Orsøkirnar til, at skyldnaður verður gjørdur millum politiska útinnan og fakliga, eru fleiri. Men felags er, at tann fakligi, *óhefti*, stovnurin ikki kann gera annað enn fylgja teimum í lóg ásettu fyrilitunum, ímeðan tann politiski stovnurin, *landstýrið,* hevur demokratiskan legitimitet at føra sín egna politikk, at taka politisk og stuttsiktaði atlit.

Á játtanarøkinum er tað so, at fáar broytingar verða vanliga gjørdar frá tí eitt fíggjarlógaruppskot verður lagt fram, til tað er samtykt. Tessvegna er tað so, at allir stovnar á fíggjarlógini gerast partar av raðfestingini hjá landstýrinum. Hetta styrkir valdið hjá landstýrismanninum og minkar um óhefti hjá viðkomandi stovni.

Hevur afturímóti sína egnu heimildarlóg, verður hann viðgjørdar á tingi fyri seg, tá tann lógin er fyri, og er ikki partur av 'pakkanum' hjá viðkomandi landstýrismanni.

Tí kunnu vit spyrja, um stovnar, ið ætlaðir eru at vera óheftir, annaðhvørt ikki skulu at standa á fíggjarlógini, ella bert standa har við nettojáttan. Tað ber tó illa til at koma til nakra avgjørda niðurstøðu, um hvat er mest í samsvar við okkara stjórnarskipan, tí rættarkeldurnar eru so ógreiðar. Sigast kann tó, at í føroysku stjórnarskipanini er onki avgjørt krav um, at allir almennir stovnar skulu vera á fíggjarlógini – enn minni við bruttotølum.

[20] Svenska regeringsforordningen

Tvørturímóti, greitt er, at summir stovnar ikki skulu vera á fíggjarlógini. Í praksis eru summir stovnar við, meðan aðrir ikki eru. Siðvenjan tykist ikki vera greið, tað tykist ikki vera nøkur bindandi siðvenja, ið greitt ásetur, hvørjir stovnar skulu vera á fíggjarlógini og í hvønn mun.

Nøkur atlit eru tó, ið antin kunnu sigast vera tey frægastu ella betru av teimum, ið møgulig eru. Við til teirra hoyrir, um politiska avgerðin at geva einum stovni originera kompetansu ella sjálvstøðugan status, eigur at vera tikin við atliti til serligu uppgávurnar og áneyðirnar at gera stovnin óheftan av landstýrinum. Tey vanligu og kravdu atlitini til grannskoðan, roknskap, heimildir fyri gjøldum, og onnur, kunnu framvegis takast.

Dømi: Lógin um landsbankan
Landsbankin virkar eftir løgtingslóg 57/1978 við seinni broytingum.

Lógin var samtykt í 1978 eftir uppskoti frá landstýrinum. Í viðmerkingunum til uppskotið[21] verður sagt:

> "Tað er eykent fyri lond við sjálvstøðugari ábyrgd fyri búskaparpolitikki teirra, at tey hava stovnsett ein tjóðbanka. Orsøkin til hetta er fyrst og fremst... at lóggávuvaldið út frá eini heildarmeting hevur hildið tað vera skynsamt at lata summar av uppgávunum upp í hendurnar á einum serligum sjálvstøðugum stovni at loysa"

Síðani verður greitt frá, hvørji evnisøki vanliga eiga at liggja hjá sjálvstøðugum stovni: peninga, kredit og valutamál. Eisini verður sagt, at ymiskt er, hvussu sjálvstøðugir hesir tjóðbankar eru, men "Mett út frá tí sum omanfyri er nevnt [um óheftu støðuna] er støðan í Føroyum eindømi." Tí "[í] Føroyum er eingin stovnur við virkisøki, sum minnir um virkisøkið hjá einum tjóðbanka..."

Nevndarálitið broytir ikki hesa fatan av, at ætlanin er at skapa ein meiri óheftan stovn, umenn, sum tað verður sagt í álitunum, "at allar størri avgerðir [vanliga í norðurlendsku tjóðbankunum] vera tiknar eftir samráðing við viðkomandi [stjórn]".

Síðani hetta varð sagt í 1978 er óhefta støðan bert styrkt, men longu tá óhefti tingmonnum á sinni.

[21] Tingmál 33/78

Minnilutarnir í nevndini finnast ikki at tí, at stovnurin skal vera óheftur, sjálvt um teir ikki taka undir við lógini.

Í 1992 verður broyting samtykt í lógini til tess at fáa bankan meiri virknan. Landstýrið sigur í viðmerkingunum[22] millum annað:

> "Landið er lítið og kemur ofta út fyri stórum konjunkturumskiftingum. Landsbankans styrki er, at hann er óheftur av seráhugamálum, tað verið seg politiskum ella vinnuligum, at aðalmálið er at laga landsins gjaldføri eftir búskaprligum tørvi, og at hann tí kann byggja sítt virksemi á eitt fakligt búskaparligt støði."

Mótstøðan og fyrivarnini frá sambandssinnaðari og borgarligari síðu vóru alla tíðina grundaði í, at landsbankin var hildin kunna føra til broytingar í ríkisrættarligu støðuni ella til ein meiri sosialistiskan búskaparpolitikk, og vera ein hóttan móti privatu bankunum.[23]

Hesar lógarviðmerkingar tykkjast greitt vísa á, at ætlanin var at skilja fakliga fyrisiting frá teirri politisku, soleiðis at landsbankin gjørdist *óheftur av seráhugamálum politiskum sum vinnuligum, grundaður á eitt fakligt búskaparligt støði.*

Samanberingar

Svenska ásetingin:

> "9 Kap 12 § Riksbanken är rikets centralbank med ansvar för valuta- och kreditpolitik. Den skall också främja ett säkert och effektivt betalningsväsende.
>
> Riksbanken är myndighet under riksdagen.
>
> Riksbanken förvaltas av åtta fullmäktige. Sju fullmäktige väljes av riksdagen. Dessa väljer för en tid av fem år en fullmäktig, som samtidigt skall vara chef för Riksbanken...
>
> 9 Kap 13 § Endast Riksbanken har rätt att ge ut sedlar och mynt..."[24]

Sjálvt í Svøríki við síni annars so óheftu fyrisiting, er landsbankin skyldur frá tí politiska útinnandi valdinum. Talan er um ein stovn við originerari kompentansu, um eitt fakligt útinnandi vald.

---

[22] Tingmál 50/91

[23] Jonhard Eliasen: Landsbanki Føroya – en centralbanks fremkomst s. 144-145.

[24] Svenska regeringsforordningen

Sama ger seg galdandi fyri centralbankan hjá ES, ECB, hvørs originera stjórnarrættarliga støða kemur fram í greinini um, hvørjir stovnar kunnu leggja mál fyri dómstólin til avgerðar:

> "ES-Traktatin Art 230 (3).
> Domstolen har... kompetence til at udtale sig om klager, der indbringes af Europa-Parlamentet, af Revisionsretten og af ECB med henblik på bevarelse af disses prærogativer."

Eftir míni fatan átti ein landsbanki at haft originera kompetansu sambært stjórnarskipanini ella í minsta lagið verið sjálvstøðugur fyrisitingarstovnur ella stovnur beinleiðis undir tinginum.

Landsbankarnir í Europeiska Samveldinum

Greitt er, at í ES hava bæði danski og bretski tjóðbankin fingið ákoyringar fyri ikki at vera nóg óheftir. Harumframt er vert at gera sær greitt, at landsbankarnir, ið virka innanfyri euro-gjaldoyra við ECB sum hægsta myndugleika, framhaldandi skulu vera sera óheftir, hóast teir ikki longur hava egið gjaldoyra at umsita.

Ein nærri lýsing av hesum kann kanska vera áhugaverd, men eg haldi tað vera nóg mikið at staðfesta, at landsbankarnir hava eina óhefta støðu, og tað í sær sjálvum eigur at vera tikið við í metingarnar í Føroyum.

Danski Nationalbankin

Í Danmark hevur Nationalbanki eins sera sjálvstøðuga støðu.

> "Banken har efter loven en helt selvstændig økonomi, og kunne det tænkes, at den ikke var i stand til at opfylde sine forpligtelser, ville kreditorerne ikke kunne rejse noget krav på statskassen."[25]

Nationalbankin hevur eitt serligt umboðsráð, sum við tí pragmatiska valdsbýtinum inniheldur umboð fyri fólkatingið.

Niðurstøða

Hetta ritið var ætlað at vísa á nøkur grundleggjandi viðurskifti viðvíkjandi føroyska fíggjarvaldinum. Sjálvt um støðan er fløkt, ber tað til at greina nøkur grundleggjandi atlit.

[25] Poul Andersen: Dansk forvaltningsret, 5. udg, s 69-70

Trupulleikarnir standast av, at stovnar ella persónar taka eina einstaka orðing upp, eitt nú 'ongin útreiðsla uttan heimild í fíggjarlóg' og lata alt annað falla til viks fyri hesum. Til tær meiri komisku avleðingarnar av slíkum pedantaríi var á sinni, at føroyska sendinevndin mundi ikki farið til sildasamráðingar í London, tí ivi var um játtanina.

Partvís er hetta orsaka av, at fólk ikki duga ella ikki eru von við at samskipa fleiri ymisk atlit ella fleiri ymsar reglur samstundis. Hetta er sera vanligur veikleiki hjá fakfyrisitingini. Partvís er hetta stríð ímillum demokratisku stjórnarskipanina og tey lógkønu øðrumegin, og so tey bókhalds- og búskaparkønu hinumegin, ið vilja leggja størri dent á, hvat út frá teirra faki er týðandi, enn hvat í lóg er galdandi.

Allar reglur viðvíkjandi fíggjarvaldinum áttu at verið lýstar og síðani viðgjørdar. Ein slík faklig og politisk fyritøka áttið at enda við eini tinglóg um játtanarskipan.

Skjal. Brot úr Svensku Stjórnarskipanini

9 kap. Finansmakten

1 § Om rätten att besluta om skatter och avgifter till staten finns bestämmelser i 8 kap.

2 § Statens medel får icke användas på annat sätt än riksdagen har bestämt. Om användningen av statsmedel för skilda behov bestämmer riksdagen genom budgetreglering enligt 3–5 §§. Riksdagen får dock bestämma att medel tages i anspråk i annan ordning.

3 § Riksdagen företager budgetreglering för närmast följande budgetår eller, om särskilda skäl föranleder det, för annan budgetperiod. Riksdagen bestämmer därvid till vilka belopp statsinkomsterna skall beräknas och anvisar anslag till angivna ändamål. Besluten härom upptages i en statsbudget.

Riksdagen kan besluta att särskilt anslag på statsbudgeten skall utgå för annan tid än budgetperioden.

Vid budgetreglering enligt denna paragraf skall riksdagen beakta behovet under krig, krigsfara eller andra utomordentliga förhållanden av medel för rikets försvar.

4 § Om budgetreglering enligt 3 § icke hinner avslutas före budgetperiodens början, bestämmer riksdagen i den omfattning som behövs om anslag för tiden till dess budgetregleringen för perioden slutföres. Riksdagen kan uppdraga åt finansutskottet att fatta sådant beslut på riksdagens vägnar. *Lag (1994:1470).*

5 § För löpande budgetår kan riksdagen på tilläggsbudget göra ny beräkning av statsinkomster samt ändra anslag och anvisa nya anslag.
6 § Regeringen avgiver förslag till statsbudget till riksdagen.
7 § Riksdagen kan i samband med budgetreglering eller annars besluta riktlinjer för viss statsverksamhet för längre tid än anslag till verksamheten avser.
8 § Statens medel och dess övriga tillgångar står till regeringens disposition. Vad nu sagts gäller dock icke tillgångar som är avsedda för riksdagen eller dess myndigheter eller som i lag har avsatts till särskild förvaltning.
9 § Riksdagen fastställer i den omfattning som behövs grunder för förvaltningen av statens egendom och förfogandet över den. Riksdagen kan därvid föreskriva att åtgärd av visst slag ej får vidtagas utan riksdagens tillstånd.
10 § Regeringen får icke utan riksdagens bemyndigande taga upp lån eller i övrigt ikläda staten ekonomisk förpliktelse. *Lag (1988:1444).*
11 § *har upphävts genom lag (1994:1481).*
12 § Riksbanken är rikets centralbank med ansvar för valuta- och kreditpolitik. Den skall också främja ett säkert och effektivt betalningsväsende.
Riksbanken är myndighet under riksdagen.
Riksbanken förvaltas av åtta fullmäktige. Sju fullmäktige väljes av riksdagen. Dessa väljer för en tid av fem år en fullmäktig, som samtidigt skall vara chef för Riksbanken. De fullmäktige som valts av riksdagen väljer inom sig ordförande. Denne får ej utöva annat uppdrag eller inneha tjänst inom Riksbankens ledning. Bestämmelser om riksdagens val av fullmäktige, om Riksbankens ledning i övrigt samt om dess verksamhet meddelas i riksdagsordningen och annan lag.
Fullmäktig som riksdagen vägrar ansvarsfrihet är därmed skild från sitt uppdrag. De fullmäktige som valts av riksdagen får skilja ordföranden från uppdraget som ordförande och den som är fullmäktig och chef för Riksbanken från hans uppdrag. *Lag (1988:1444).*
13 § Endast Riksbanken har rätt att ge ut sedlar och mynt. Bestämmelser om penning- och betalningsväsendet meddelas i övrigt genom lag. *Lag (1991:1501).*