The Concept of Legal Rights to an Environment in Denmark

By Frants Dalgaard-Knudsen*

I. The existence of a general legal right to an environment

1. Introduction

Traditional Danish environmental law concerns the protection of the natural environment, and can be divided into sections covering planning, conservation and pollution. Laws on the protection of animals and on fishing are not traditionally regarded as environmental law. In recent time, acts on workers protection or working environment tend to be treated as a special kind of environmental law.

For the purpose of this article, the concept of a right to an environment may be understood as a possibility to enjoy as high a degree of natural state as possible in one's surroundings, without unnecessary disturbances deriving from mankind in the form of noise, dirt, polluted air or various contrivances. More philosophically, the concept may also be seen as our degree of determination in the safeguarding of our descendants possibilities of inheriting a pleasant country and, in the widest consequence, an inhabitable planet.

2. Constitutional rights and obligations

The revised Danish Constitution of 1953 does not contain any provisions referring to or directly relating to the natural environment. The Constitution grants the traditional personal rights of speech, assembly, association and religious liberty. Art. 71 lays down that the personal liberty is inviolable. It is not, however, possible to deduce any general or specific personal rights to an environment.

Only one article of the Constitution is frequently of importance to environmental matters. This is art. 73, which lays down that "the right to property is inviolable. No one may be forced to surrender his property unless common interest so requires. It may only take place in pursuance of an act and against full compensation." In practice, the compensation principle laid down in this provision may work both against and in favour of maintaining a status-quo situation in the natural environment. Two examples; A) If the preservation authorities decide to preserve a landscape, the owners may claim compensation for lost possibilities of, for instance, parcelling-out or agricultural cultivation. B) If a new high-way is going to be constructed, the owners of houses near it may claim compensation for deterioration of the value of their properties due to noise, vibrations or aesthetic deterioration caused by the high-way.

The existence of natural environment has been taken for granted, and this is probably why the Constitution does not contain any provisions regarding the environment as such. There was no need to institute an explicit obligation for

* Attorney in the lawfirm of La Cour & Koch-Nielsen, Copenhagen. Doctoral candidate of the European University Institute.
the State to safeguard the environment, albeit that such an obligation might exist implicitly, deduced from the theories on the role of the State.

There might exist a principle of a right for everyone to enjoy fully the surrounding nature. Article 6-17-31 in the Danish Code of 1683, which still remain in force, prescribe that "one may pluck as many nuts as one eats there, and no more." In practice this provision has been expanded to cover all fruits and mushrooms situated on unfenced land.

3. General rights provided in legislation

In Denmark there is a very long tradition of environmental protection. The first acts on conservation of forests were passed about two centuries ago, however, the aim of these acts were to reserve the timber for naval purposes. By a Royal Decree of 4 February 1587, all oysters in Danish territorial waters became protected, or, more precisely, reserved for the King.

The issuance of environmental legislation in a modern sense was initiated around a century ago. For instance it was laid down in art. 54 in the Act on discharge of Water (1880) that in connection with the establishment of sewer systems, the relevant Agricultural Commission should consider whether the watercourse in question was suited for receival of the waste water, and the Commission could demand the establishment of purification installations. For instance in a case in 1912, a Commission decided that the waste water should pass through four precipitation basins before discharge into the sound of Øresund due to the danger to the population of fish in the waters.

Traditionally, Danish legislation does not include general preambles or introductions with ambiguous provisions or statements concerning rights or obligations of the state or the individual. Instead, the legislation tend to be quite specific and comprehensive, whilst the political statements of intentions may be found in the "travaux preparatoires".

Some of the modern environmental legislation, however, does include general provisions on the aim of the act or the duties of the relevant minister. The Environmental Protection Act states in its art. 1 that the objective of the act is to prevent and combat pollution of air, water and soil, etc., and it authorizes the Minister for the Environment to issue various regulations to this effect. The National and Regional Planning Act prescribes in its art. 2 that the Minister for the Environment shall be responsible for the carrying out of a comprehensive physical national planning and for having the necessary investigations undertaken in this connection. Art. 1 of the Conservation of Nature Act lays down that the Act shall be designed to protect the nature and landscape values of Denmark and to afford to the population the widest possible opportunity to enjoy these values.

It seems like the environmental aims of these Acts are achieved by means of imposing various duties and responsibilities on to various governmental authorities. The Conservation Act also grants the general public the right to free access to beaches and forests, but these rights are formulated as orders imposed on the landowner in question, like for instance "any private woodland area ... shall be open to the public".