NORDIC LEGAL SYSTEM: CHALLENGES

Ole HASSELBALCH, Aarhus University, Aarhus 8000, Kingdom of Denmark
E-mail: ole.hasselbalch@mail.dk

The author continues the study of the Northern legal system, which he started in the Journal of Foreign Legislation and Comparative Law, 2019, no. 2. The author of the article highlights three main and the most substantial challenges, such as: globalization, illegal immigration and European Union Law influence. The author is confident in his statement, that the Nordic Legal System is not so formalized as the other European legal models are. It is said in the article that the Nordic Legal System has its thousands of years traditions and it is based on the common people's viewpoints. On the contrary, the EU Law is too much full of bureaucracy and it is an essential threat to the democratic pillars of the Scandinavian legal model. Moreover, the EU legal standards stipulate censorship, which limits and prevents the everyday's realization of the fundamental human rights, the Scandinavian inhabitants got used to enjoying for granted. The article also tells the readers about the potential and real threat of the illicit immigration.

Keywords: legal standards, legal family, legal models, threat, immigrants, globalization, illicit, fundamental human rights.


Part II. Challenges

Free Speech under pressure

Today our legal systems as drafted in headlines above are under pressure. In my opinion, one major reason is that the understanding of what democracy means to some extent has deteriorated and too many people take the goods they enjoy for granted so they are only superficially interested even in vital political issues. This attitude leaves ample room for manipulation of the public opinion and for abuse by an political elite, meaning it gives this elite the opportunity to abort into their own abstractions instead of focusing on the hard facts of the real world.
That is a dangerous situation since we are under pressure — in particular from “internationalization”, “globalization” and mass-immigration.

Societies under pressure might be enforced to modify their approach to democracy — such as England did under WWII. But the Nordic countries are in no way under any similar kind of pressure which could legitimize neglect of democratic key values. Nevertheless, totalitarian concepts and attitudes are in new growth within our societies. Softened by seductive muzak dissolution of the basic ideas of democracy is smuggled into our brains: old ideals are redefined and given a new meaning which serves a new social order. A slow, imperceptible, smooth movement into what seems to become a disaster seems to be taking place.

It is tempting to quote the historian Barbara W. Tuchman for her conclusion in her book “The March of Folly” (1984):

“Why do holders of high office so often act contrary to the way reason points and enlightened self-interest suggests? Why does intelligent mental process seem so often not to function?

Why, to begin at the beginning, did the Trojan rulers drag that suspicious-looking wooden horse inside their walls despite every reason to suspect a Greek trick? Why did successive ministries of George III insist on coercing rather than conciliating the American colonies though repeatedly advised by many counselors that the harm done must be greater than any possible gain? Why did Charles XII and Napoleon and successively Hitler invade Russia despite the disasters incurred by each predecessor? Why did Montezuma, master of fierce and eager armies and of a city of 300,000, succumb passively to a party of several hundred alien invaders even after they had shown themselves all too obviously human beings, not gods? ...”

Historic examples of stupid governing are numerous. Stupid not only in the light of clear hindsight, but also on their own premises in their own time. Stupid because it would have been possible to act differently. And stupid because it was not only stupidity of one person such as an individual sovereign ruler, but the stupidity of a ruling class as such. As Tuchmann concludes: “Folly's appearance is independent of era or locality: it is timeless and universal, although the habits and beliefs of a particular time and place determine the form it takes. It is unrelated to type of regime: monarchy, oligarchy and democracy produce it equally. Nor is it peculiar to nation or class.”

Tuchman holds the opinion that the folly she describes is due to human nature: «Wooden-headedness, the source of self-deception, is a factor that plays a remarkably large role in government. It consists in assessing a situation in terms of preconceived fixed notions while ignoring or rejecting any contrary signs. It is acting according to wish while not allowing oneself to be deflected by the facts. It is epitomized in a historian's statement about Philip II of Spain, the surpassing wooden-head of all sovereigns: No experience of the failure of his policy could shake his belief in its essential excellence. ... Wooden-headedness is also the refusal to benefit from experience ...”

Moreover: power inevitably leads to such wooden-headedness. The power to take decision causes lack of thought, and responsibility of power often disintegrates as power itself grows: “A principle that emerges in the cases so far mentioned is that folly is a child of power. We all know ... that power corrupts. We are less aware that it breeds folly: that the power to command frequently causes failure to think; that the responsibility of power often fades as its exercise augments ...”

Democracy and freedom to oppose a disastrous course is the best way to deprive a ruler or a ruling class of the sovereign power to lead society into disaster due to this mechanism. But democracy does not always turn out that way — at least not in Scandinavia today. I will explain this a little further:

What is “Speech”?

Democracy is tightly connected to freedom of speech meaning freedom to express oneself to other human beings. What does this imply?

In a more narrow sense freedom of speech means freedom to express oneself verbally. However, freedom of speech is not only a question of freedom to speak up verbally. Thus information could be expressed not only by the use of words, but in a number of other ways too: by signs, pictures/images, music, markings by the way to dress, by conduct etc. It might in fact also be by abstaining from any expression. And as for words: words can be used in different ways. An opinion or a fact can for example be expressed through irony as well as argumentative conclusions.

Moreover, a distinction should be made between expression of opinions and expression of facts. Both could be more or less neutral. Expression of opinions for example might be polemic, and expression of facts could be close to an expression of opinion by stressing only parts of the given fact and thereby biasing the statement.

Finally, one must realize that a piece of communication might be a one-off thing or it might be part of many communications running according to the same line. Moreover, the expression might not only be that of an individual but also that of group.

Legitimate Limitations to Free Speech

Free speech in this understanding is subjected to some legitimate limitations. Thus the principle of free speech is no excuse for calls for violence, swindling others for money, committing fraud in commercial marketing or genuine libel. Furthermore, according to the law on medias, newspapers, TV-stations and radio such medias cannot say and write exactly as they please but are bound by ethical standards set up in order to promote truthfulness and objectivity.

The problem is that in some cases it is difficult to set the borderline between legitimate and illegitimate
expressions. In principle, truthful and objective information on facts will always be legitimate. But the borderline between expression of objective facts and expressions of opinions could be narrow. Since long this problem has been dealt with in lawsuits on slander. But today the burning issue is what constitutes so-called “hate-crimes.” This is due to the fact that we are confronted with upcoming evils, which can only be objectively described in what might be defined as hateful terms.

**Censorship**

Expressions — whatever form or context they have — can be prevented or obstructed in different ways and traditional censorship followed by imprisonment is only one tool. In real life the following remedies are available for the censor:

*Immediate, hard repression*, i.e. pre-prevention of the physical communication.

The classical tool to prevent communication is pre-censorship on the physical media (newspapers, books, TV, internet etc.) accompanied by confiscation or other forms of neutralization of the media. In the same way, meetings which are platforms for staging of undesirable communication could be forbidden, and associations which form channels for distribution of the same could be dissolved.

Examples of this are numerous in totalitarian societies. However, they also occur in Western democracies. Here it would most typically be private — but possibly publicly funded — extremist groupings committing violence under the protection of a passive police. The usual excuse nowadays is that the oppressing groups are “anti-racists”, “anti-fascists” or the like and that their victims are “racists”, “Nazis”, “extreme-rightists” etc.

*Preceding (forehand) soft/indirect repression* i.e. depriving the possible communicator his motive to express himself at all or preventing the communicator from being understood according to what he actually says.

Such repression might for example be exercised by creating a group-, moral- or other pressure serving either to deprive the potential communicator of his ambition to communicate undesirable information or to disable his media. It could also simply be exercised by smearing him by the use of false or falsified information so that it will be useless for him to communicate his information anyway since his seriousness has previously been demolished in the minds of the audience.

*Subsequent hard repression*, i.e. penalizing the distribution of undesirable information or civil reactions to the same, for instance dismissal, legalizing excessive claims on damages, destruction of the offender’s goods, psychological and physical attacks.

*Subsequent soft/indirect repression*, i.e. afterwards neutralization by unfair means information already distributed.

This could easily be done by smearing the ones who launch undesirable information or by subsequent building-up of group pressure by which motivates the recipient of information not to consider what he was told or not to accept it as a possible truth or legitimate opinion. Another solution would be to echo the information in a distorted form so that it attracts rejection instead of acceptance — or distribution of fake counter-information. A more unconventional method would be to launch long-drawn lawsuits on the informant, claiming that he is committing a breach of rules on slander (i.e. lawsuits extracted in length and details into absurdity with the intention of exhausting him psychologically and economically).

All these tools to suppress undesirable facts and arguments are equally effective. Thus it does not matter whether the intended recipient of information does not receive the information physically at all or does not take notice of what he actually receives or does not take seriously what he has noticed because somebody manipulates him.

Therefore it is not possible to discuss censorship and free speech without considering the numerous tricks which are available to influence human behaviour quite independently of the substance matter and the conclusions which might logically be drawn on that basis — even if this issue is not usually regarded an issue for lawyers to deal with.

**Psychological Manipulation**

Numerous psychological tricks are available to the ones who try to influence human behavior quite independently of what the facts are and which conclusions might naturally be drawn on that basis. Thus modern sales-promotion technique encompasses a lot of methods to make the victim (mis)take fiction for facts and overlook relevant opinions. And unfortunately in contemporary Scandinavia, methods which would previously be ruled out as unfair press-practice are just regarded as “smart” journalism as long as they serve a “noble” — i.a. humanitarian, environmental or other “politically correct” — purposes.

It would be practically impossible to mention them all. However, three of them should be pinpointed since they are in frequently in use in Scandinavian societies today:

*Appeal to convenience*. It is easy to exploit man’s tendency to take it “the easy way”. Only few people want to stress themselves by doing too much thinking. If a man has the choice between difficult investigation and contemplation on the one hand and looking at some brain-crushing program on TV on the other, he will tend to make the last choice.

Speculation in the credulity of the public therefore has become a lifestyle. Politicians know only too well that it is not popular to present new facts to the voters and ask them to make up their minds about them. Therefore politicians tend to find ways to exploit the fact that people tend to believe the truth of what they already
know or what is easiest for them to see or understand and most convenient for themselves. It is therefore easy to keep people’s attention away from things that are not “mainstream” and maybe even unpleasant to think of. “Normality”. The established “normality” or “mainstream” — or the artificially construed picture of the same — therefore constitutes the best platform to work on in an effort to influence the public.

Once established and therefore massively echoed by politicians, medias and public-opinion makers — i.e. the “official” sources of information — the public will prefer to stick to it even if it only mirrors the more complicated realities of an unstructured world only to a limited degree. Thereby the very existence of a “normal picture” of the facts and the relevant opinions makes it hard to convince people that things are quite different. And creation of an artificial “mainstream” opinion is one of the most important tools in the tool-box of a manipulator.

Kidnapping words and concepts. Changing the meaning of words is an important tool of manipulation too. If the meaning of a word is changed, it is possible to transfer feelings and attitudes connected to that word into a new area — as already George Orwell described in his book 1984.

There are numerous examples of this. Some years ago, when it was vital in negotiations with the EC/EU to deprive the Danes of part of their national independence, the tool used was a so-called “national compromise”. And the tool to deprive the Danes of their exclusive right to their own territory is “human rights” of others.

Other examples: Instead of talking of USA and NATO, reference is made to “international society”. When an aggression against Serbia was staged — in fact as a violation of international law and the NATO-treaty — it was called a “peace-preserving action”. And when a dictate was forced upon the Serbs, it was called a “stability pact”.

No wonder therefore that opposition to immigration is called “racism and xenophobia” and the arguments leading to that opposition is called “hate-speech” — thereby legitimizing a fierce fight against the same (paid by the tax-payers of course) and legitimizing all sorts of tricks as part of that struggle.

Towards New Totalitarianism
As pointed out above the traditional democratic values have come under severe pressure in Scandinavia during the past decades. In particular, free speech has been hampered severely not only by forceful lobby-groups who specialize even in stigmatizing information and persons not favourable to the points of views which they promote. Free speech is also threatened by extreme political organisations who commit violent (even murderous) attacks on what they consider “fascists”, “racists” etc. (the adjectives been used on a rather loose and discretionary basis). And not least it is threatened by traditional political parties and the mainstream-medias. To a growing extent these political parties have taken their own views as to what is right and what is wrong and what the facts are as the only legitimate standpoint. And mainstream medias have entered into an imaginary world where journalists create the only valid approach even if this approach might be far from reality.

This development is disastrous in a period where developments are far beyond the comprehension of people who are tied by inertia in their approach to what happens in the world.

— Oppressing Information
I will take Denmark as an example — and could add that in Sweden it has become even worse:

Public debate in Denmark has been hit by censorship in new forms. One scholar — Eyvind Vesselbo, later MP — pinpointed the phenomenon in the newspaper Berlingske Tidende already 8 August 1995 and concludes that in particular issues such as immigration, environment and culture have suffered.

In the opinion of the present author the most serious abuses take place within the first subject which therefore forms the best example of what is happening:

Danish “dissidents” in this field — meaning spokesmen for a more restrictive immigration policy, who staged “political incorrect” information on the issue — were ostracized for a long time and to a considerable extent still are. There are numerous examples of political groupings in Denmark — usually on the political left — which have successfully rubber-stamped the political views of these dissidents as being “antidemocratic”, a “violation of human rights” etc.(!)

A virtual flood of disinformation stressing these themes staged a similar agenda in the most important mainstream-medias. The reason was a widespread inclination among “decent” people to demonstrate their decency by echoing the accusation supplemented by pure wooden-headedness among the journalists.

Therefore a lot of what later on proved to be true information was cut off from the public and in some media still is. And many journalists still tend to smear in clever ways what they themselves (personally) find to be an “extremist right wing”, even if their victims are ordinary, worried people who just do not consent to the

1 This in spite of the fact that “racism” is an ideology, theory or attitude maintaining that certain races of human beings are superior to others and have an inborn right to rule, that races ought to be kept separate or that the racial purity of nations must be preserved (cf. the definition of UNESCO’s Declaration on Race and Racial Prejudice of 27 November 1978, Article 2, 1: “Any theory which involves the claim that racial or ethnic groups are inherently superior, thus implying that some would be entitled to dominate or eliminate others, presumed to be inferior, or which bases value judgments on racial differentiation...”. Racism is, in other words, a concept grounded in biology and cannot be applied to the spheres of religion, ideology, political persuasion or lifestyle. But how many in particular young ones remember that today?
“humanitarian” immigration policy. False information and pure fabrications are still abundant in this context.

Effective legislation against slander and press-abuses of course forms a tool of protection against indirect censorship of this kind, but the law on this is inadequate and leaves ample room for launching even regular lies without being contradicted. Thus smearing is oftentimes done in a subtle way where lies and fabrications are injected indirectly to the public, accompanied by false information on the dissidents’ reportedly “absurd” opinions. Most people have not the guts or the knowledge to object to such methods and thereby also run the risk of putting themselves in the firing zone. And once told, the stories of the awful “extreme right” are often widely echoed by people who want to demonstrate their position on the politically correct side.

Self-evidently, information on facts coming from the “wrong” side is pr. definition not accepted as facts at all, however well-documented they might be. One example as to how far this attitude is prevalent is that the Danish Association — a cross-party movement founded in 1987 to safeguard Danish culture, language and traditional lifestyle — in the 1980s collected a lot of (official) information on trends in population growth in different parts of the world from the UN information-office in Copenhagen and published it. This was immediately characterized as an expression of the Association’s extremism(!) The source of the information was of course not mentioned.

Even today dissidents are usually not used by the press as “witnesses” when aspects of immigration-policy are dealt with. This in spite of the fact that the development which actually has taken place over the years has proved that they know more about the facts and of what might be expected to come than spokesmen of the “official” truth.

This is a characteristic feature: the elite tends to speak not with but about the holders of political incorrect opinions. Even if things have turned into the better over the last years, many newspapers still avoid letters to the editor which seriously question reason and reality in the images of the elite.

Thus many important medias do not see their primary role as distributors of information in the feeding-line of democracy. Instead they put themselves in the role of an attorney for political correct opinions and distributor of (fabricated) facts supporting such opinions. In short: they have a “mission”.

Another problem: Public libraries were — at least for a long time — almost clinically cleansed of books and pamphlets coming from the dissident side. The right to be heard, which constitutes a central part of the formal legislation on libraries, is not applied in full even today. On the contrary, it seems to be legitimate to try to keep their pamphlets and books away from the shelves.

There are also numerous examples that undesirable facts and legitimate views are not even accepted in paid advertisements, that scholars who represent the “wrong” opinions are blacklisted for long periods of time and cannot have controversial writings published even if they are well documented, that private businessmen with “incorrect” attitudes are boycotted and employees in the same position have their careers put to a standstill, that students are harassed so that they are not able to finish their exams, that private banks dare not have political incorrect customers and that organisations who have seen no problems in using information from the “revolutionary” political left abstain from using factual information solely because it is administered by politically incorrect persons.

Long-drawn chicanery lawsuits have also been initiated by for example certain religious groupings and by Neo-Nazis in order to stop undesirable information. For instance, some years ago the spokesman of the Danish Jewish Society, who tried to counteract abuse of Holocaust to promote the new forms of “anti-racism”, was neutralized by a so-called Nazi-hunter, who actually himself had not only produced Nazi-propaganda, but in fact acted on the basis of a written contract with the Nazis themselves.

In addition, there are violent attacks upon persons who do not hail the policy of open borders — usually committed under the excuse that they are extreme rightists, “racists” and “Nazis”. At the formation of the Danish Association in 1987, the founding-meeting was even attacked with bombs and poison gas (which was of course not mentioned in the mainstream-medias).

— The Dictatorship of Human Rights

After WWII, human rights as formulated in the human rights’ conventions of the 1940s and 1950s for natural reasons play a vital role in the European mind. Human rights as formulated in these conventions are, however, often defined in vague and indefinite principles. Consequently, much is left in the hands of the administrators of these rights i.e. not only the European Court of Human Rights which legislates on its own, but also the national institutions set up to administer human rights and give advice on their application.

This has led to a rather unsound development: The human right institutions have attracted lots of experts — and pseudo experts — who are not only professionally but also personally engaged in the substance-matter. To some extent, special political groupings have also tried to monopolize their (exclusive) right to be the guardians of human rights. In this way, a one-eye apparatus grew up — heavily supported by the State. This in turn attracted a lot of supporters, who in this way got easy access not only to influence, but also to money and resources which they could not even have hoped for, had they been on their own.

Since the politicians did not want to oppose the constant growing demands from such administrators of human rights — which for a long time were at least in principle supported by the public opinion as far as the overarching principles were concerned — their influence grew constantly. Unfortunately, this did not increase the quality of their work.
On the contrary — due to the vagueness of the basic sources of law and the relatively practical unimportance of the matter, a low-level, human-rights jurisprudence flourished. This meant for example that only one approach was usually accepted as being in accordance with “human rights”, namely the approach closest to the personal feelings and desires of the human-rights administrators.

So it could be said that the administrators of human rights have turned into professional “good-doers”. Therefore human rights as a such have fallen into distrust within large circles of society. Nevertheless, “human rights” as defined by the good-doers still is a key for political decision-making and thereby forms the basis of destruction of society in the most critical phase of Danish history ever — the phase unprecedented in history where the Danes very right to their own territory is at stake due to immigration from the Third World.

— Hate-Speech” and Blasphemy

As already said: In a democracy, people should have the opportunity to elect its representatives on the basis of their ideology and political intentions even if somebody feels bad about them. Accordingly, candidates for political offices should be allowed to express themselves freely — as long as they do not resort to onright slander — or threats of violence. Moreover, citizens should have the freedom to discuss any subject with only limited exemptions. If that is not possible, there is no real democracy.

I will give you just one example of what is happening:


A framework decision is a legal instrument with clearly defined implications: according to Article 34 of the EU Treaty, such a decision is binding on the member states in regard to the intended objective. However, it is up to national authorities to determine in what form and by what means it is to be implemented.

This means that every member state in the European Union is obliged to bring about a legal order that complies with the demands of the Framework Decision as interpreted by the European Court of Justice.

The 2008 Framework Decision thus institutes an EU-wide legal regime enforced by the traditionally activist European Court of Justice. This legal regime has never been discussed with the populations of the member states, nor have these populations ever been given the opportunity to decide whether they wanted their right of free speech curtailed in the manner determined by the Framework Decision.

The background is the following:

Over the years there was constant pressure from human-rights administrators and extreme left-wing organisations of different kinds to focus on the postulated growing “racism” in Europe. The term is put in quotation marks because this pressure was not accompanied by well-documented proof that there was in fact such a growth, no clear definition of the term was established, and no distinction was made between “racism” and what was called “xenophobia” either.

The whole concept therefore forms more of an appeal to feelings than to the brain. This might be why the European politicians proved vulnerable to the approach — another reason might be the simple idea that by granting the leftists and good-doers this lump of meat, which seemed to be of no real importance, they might be silenced and maybe even made in favour of the European idea.

Whatever the reason was a development was initiated which after a couple of stand-stills ended up in the paper mentioned — full reports from the meetings are not public, but apparently the Danish Minister ran into domestic problems and a couple of East-European ministers saw only too well the resemblance to what they had seen once before.

It is essential to have an open discussion on the consequences of the immigration to Europe and the acceptability of the immigrants’ values and religious habits, which are in some respects in sharp contrast to the values of democracy. In spite of this the Framework Decision forms a formidable example of an attempt to suppress free speech.

The preamble of course takes its starting point in the statement that “racism and xenophobia” — which are not defined anywhere in the decision or elsewhere in EU-legislation — are direct violations of the principles of liberty, democracy, respect of human rights and fundamental freedoms and the rule of law, principles upon which the European Union is founded and which are common to the Member States. It then mentions a lot of EU-plans, resolutions, communications etc. on the issue — none of which do in fact go into the substance matter.

In other words: It draws on glossy values praised by almost everybody and on decisions already taken — and avoids the sore fact that these decisions are not based on rational reflection.

It then states that the — still undefined — “racism and xenophobia” constitute a threat to groups of persons who are the targets of such behavior, wherefore it is necessary to define a common criminal-law approach in the EU to this phenomenon in order to ensure that the same behaviour constitutes an offence in all Member States and that effective, proportionate and dissuasive penalties should be provided for natural and legal persons having committed or being liable to such offences (EU-language).

It is really an interesting approach: who could possibly say that evils that are not defined will be a threat to anything?
More specifically, according to the instrument Each Member State shall take the measures necessary to ensure that for example intentional public inciting to violence or hatred directed against a group of persons or a member of such a group defined by reference to race, colour, religion, descent or national or ethnic origin is punishable (Article 1, 1). According to Article 1, 2 Member States may choose to punish only conduct which is either carried out in a manner likely to disturb public order or which is threatening, abusive or insulting — whatever that is.

Setting up the required restrictions in national law is rather problematic:

According to Article 1, 3 for the purpose of paragraph 1, the reference to “religion” is intended to cover, at least, conduct which is a pretext for directing acts against a group of persons or a member of such a group defined by reference to race, colour, descent, or national or ethnic origin. And according to the preamble (8) “religion” should be understood as broadly referring to persons defined by reference to their religious convictions or beliefs.

As a lawyer will easily see: what on earth does this mean?

What constitutes a religion? How could we possibly make a clear distinction between religions and political ideologies? And is any belief system that claims to be a religion automatically protected against criticism or ridicule? Should primitive religions which exercise man-destructive ceremonies be respected too? And if a religion — such as Islam — encompasses a complete societal ideology including a political as well as a legal system mandated by its God, should criticism or denigration of it then be punishable by law?

Moreover, ruling out certain negative opinions and negative, factual information on all kinds of beliefs which according to tradition are regarded as religions, just because we define them as expressions of “racism and xenophobia” means giving such religions protection from criticized. Are we really sure that they all deserve such a privilege?

The obvious nonsense incorporated in the text and the anti-democratic approach of the whole instrument of course forms a problem to its fathers. No wonder therefore that Article 7 states that the Framework Decision shall not have the effect of modifying the obligation to respect fundamental rights and fundamental legal principles, including freedom of expression and association, as enshrined in Article 6 of the Treaty on European Union, nor shall it have the effect of requiring Member States to take measures in contradiction to fundamental principles relating to freedom of association and freedom of expression, in particular freedom of the press and the freedom of expression in other media as they result from constitutional traditions or rules governing the rights and responsibilities of, and the procedural guarantees for, the press or other media where these rules relate to the determination or limitation of liability. Cf. also (14) of the preamble:

“This Framework Decision respects the fundamental rights and observes the principles recognised by Article 6 of the Treaty on European Union and by the European Convention for the Protection of Human Rights and Fundamental Freedoms, in particular Articles 10 and 11 thereof, and reflected in the Charter of Fundamental Rights of the European Union, and notably Chapters II and VI thereof.”

What does this modification imply? Obviously, key-elements of the instrument itself collide with the fundamental principles of the EU? According to the instrument, the Member States shall pass bills which in principle will seriously limit traditional constitutional rights of the citizens — but this should not be done in a way which limits their traditional constitutional rights(!)

Even more: what is “hated” as stated in the resolution? When does dissociation from or arguments against a religion or an idea turn into expressions of “hated”? Should all religions be protected from criticism, and are all cultural features acceptable? How does one express criticism against an idea or habits prevalent in a culture without risking that it might be taken for incitement to hatred? How do we deal with a belief system that is in itself hateful or encourages violence against non-believers or towards adherents of other religions? Should people also be punished for expressing hatred of those who hate them? Should one be obligated by law not to condemn the intolerant?

And what does “inciting” to hatred mean? Example: as already said freedom of speech is also the right to argue with humor and irony — thus for instance to condense an idea, an assessment or a fact into a cartoon or an image. Cartoons might in fact in one short glimpse pinpoint something which it would take thousands of words to explain, and cartoons are often much easier to understand. All Danish institutions and public persons are cartooned and thereby ridiculed from time to time — individuals as well as the Church, political parties etc. Even the Queen has had her caricature drawn. Should abuse of power, wooden-headedness of political and religious leaders and sources of disorder and stupidity not be allowed to be pinpointed, criticized and cartooned?

And as for the exemption rule in Article 1, 2: if a group protected by Article 1,1 choses to disturb public order due to what somebody is expected to express, the group is able to prevent it from being said at all just by the pure threat of causing such disorder. In the same way it is up to the individual or group to decide whether he/it chooses to feel threatened, abused or insulted.

If freedom of speech is limited by the sole reason that somebody is offended or even hated for good reasons, there would in fact not be any freedom of speech at all. Surely, the sovereign kings and the nobility of previous times felt offended and hated when they were met with claims for democracy. Hitler felt offended when Charlie
Chaplin made a caricature of him in the movie “The Dictator”. And the Pope and his Catholics felt highly offended when Northern Europe refused him, cartooned him and had its Reformation. They felt even more offended when scientists claimed that it was not the sun which circled around our globe but the other way around. He even managed to burn some scientists on the bonfire for that reason.

But how would our countries have looked today if nobody had dared to stand up and offend dogmatic Catholicism on this issue? If anybody feels threatened, abused or insulted, he or the group is in his/its full right to argue why the criticizers are wrong and deceitful. If a threat implies a threat of violence, it is a matter for the police to deal with according to the rules in the penal act on such threats. And if an obvious offence exceeds the borderline of truth, a lawsuit for slander could be launched.

**Modern Nordic law and the EU**

The EU-membership — and as for Norway and Iceland the European Free Trade Association (EFTA) — challenge the traditional Nordic legal systems on a broad scale. To the present author the following legal issues are the most conspicuous:

**The binding moral values**

As for the basic regulation of the EU it is a problem that the EU sets up substantial ideals for the Europeans to abide by and does not limit itself to secure basic rights of the individual.

This is mirrored by the Lisbon-Treaty as well as in supplementary EU-legislation.

In this context look for example in the EU-Treaty article 2 which states that the Union “is founded on the values of respect for human dignity, freedom, democracy, equality, the rule of law and respect for human rights, including the rights of persons belonging to minorities. These values are common to the Member States in a society in which pluralism, non-discrimination, tolerance, justice, solidarity and equality between women and men prevail.” These “glittering generalities” (i.e. words sounding attractive but containing in fact no substantial meaning when it comes to the details) leave ample room for interpretation according to the discretion of the EU-authorities. What will happen to those whose comprehension of these values does not correspond to the comprehension of the European Commission and the European Court of Justice?

**The top-to-bottom distance**

The Nordic countries now have to abide by a legal model which mirrors the needs of several hundred Europeans instead of only a little more than twenty million (ethnic) Scandinavians. And the EU-model is designed primarily on the basis of French and to some extent German law and legal tradition, which in many respects differs from the traditional Nordic one.

Another consequence of the organisational model upon which EU is built is that the distance between “top and bottom” of the political pyramid has increased considerably. Thus the EU has no Parliament similar to the Scandinavian parliaments — when it comes to the end of the day the real legislator is the Council of Ministers.

And what is more: the underlying trend is that EU-politicians are scared to have a public vote of what they themselves consider better to handle that the common man. Read the Lisbon Treaty: formally et is supposed to support democracy, but in practice the Europeans are not allowed to have a vote on even key issues if it can in any way be avoided.

So it could be argued that the EU is by definition run by an elite not by the voters. And on the EU-level the distance between the individual citizens and this elite is huge — contrary to the distance between parliaments and citizens in the Nordic countries. Consequently, there is risk that policy-making at the EU-level is not based upon the same proximity to the problems of the common man as traditional law-making in our countries.

Maybe that is why the decision-making process within the EU does not live up to the democratic ideal where voters’ interests and voters’ influence should form the driving force in the legislative process. Influence of a European citizen on the decisions taken is distant and indirect to a degree which makes it almost non-existent. Power is not in the hands of the voters, but in the hands of the EU-institutions.

This is an unsatisfactory situation since it leaves ample room for factors which are not relevant to the voters or which are even directly against voters’ interests to influence events. It also leaves room for resolute interest groups of different kinds — NGOs, huge enterprises and associations of the same etc. — to take the lead.

“Lobbying activities” by such groups are even accepted as a relevant tool to influence EU-decision-making. But the influence of lobbyists is a dangerous parameter for political decision-making since by nature it is by nature heavily biased.

Naturally the groups represented by lobbyists should have their interests taken into consideration too. But when it comes to professional lobbying, their influence will oftentimes be exercised on the cost of others who do not have the same intellectual or economic strength to have their need put on the political agenda. And even more: part of a lobbying-process might be to suppress contradictory interests. Therefore lobbying might result in the whipping out of key issues and therefore the outcome of lobby activities might easily be a distorted basis for the running of society in the interests of all citizens.

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2 Only little has been written on this issue in non-Scandinavian languages, but see: Khasselbalk О. Law-making traditions of Denmark in the context of the European law. Международное публичное и частное право = International Public and Private Law, 2010, no. 6 (57), pp. 39—45. (In Russ.)
Over-Regulation

Moreover, what could be called “legalism” is not only growing fast in EU-law, it also encompasses subject matters which are irrelevant for the purpose of European cooperation only. We are simply facing a more and more comprehensive and detailed network of EU-law.

A problem in this context is also the risk that the European politicians abort into subjects that are more interesting to them than to ordinary people, to get stuck in details which are attractive to a politician, but of less interest to society as such and to demonstrative resolution-making instead of sticking to the most urgent needs.

This phenomenon is well known in all countries. But to a great degree the tendency is largely strengthened by the tendency in Central European countries to legislate in details to a degree quite different from Scandinavian tradition — thereby also creating a monopoly of the “expertise” in such contexts.

One consequence of this is that EU constantly enlarges the field governed by mandatory legislation on the cost of “legislation” made by the involved parties themselves by way of agreements. Another is the sometimes extreme “detailisation” of the EU-regulations in an attempt to regulate any possible occurring issue — the result naturally being a sometimes completely unmanageable body of rules. Take for example the new Regulation (EU) 2016/679 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data: It is completely incomprehensible to ordinary people and on the practical level impossibly to apply in all aspects.

Judges as legislators

Finally, Scandinavian courts work in a very different form than the Court of Justice of the European Union:

As will be understood, our judges are not allowed to make new laws by themselves — new laws should have “democratic legitimation”, meaning that suggestions to make new law should undergo the normal procedures for law-making in Parliament. However, the European Court of Justice is “activistic” meaning that its rulings are “dynamic” — court-practice might deviate over time from what has been blue-stamped by the EU-legislator.

This is a serious problem. Why? Because judges for the European Court of Justice are not appointed in order to perform the task of a legislator. Their recruitment is narrow, their experience in issues of practical life and the life of the common man is limited, their horizon is barred by their personal background — which is privileged — and they make their rulings on the basis of EU-law and what occurs in the courtroom only.

This creates constitutional problems. A recent example of this is a ruling by the Danish Supreme Court on a case were the Danish Parliament beyond any doubt had passed a bill which according to a later ruling of the European Court of Justice was in contradiction to EU-law. The Supreme Court ruled that Danish law should apply even if it was in contradiction to EU-law since the Danish Courts have not in their power to change what has been decided by the Danish Parliament3.

REFERENCES


3 Surpreme Court ruling 6. December 2016.