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## THE LEGISLATIVE PROCESS IN FOLKETING. QUALITY OF LAW AS A DERIVATIVE OF CONSENSUS PARLIAMENTARISM

### Abstract

The purpose of the paper is to analyse the relationship between the procedural elements of consensus parliamentarism and the legislative process in the Folketing as well as their impact on the quality of the laws passed. We indicate important differences in the systemic design of the legislative process in the Folketing stemming from the systemic synergy of firm legal regulations and dynamic political agreements made in the pre-parliamentary phase. This defines the legislative process more broadly than is done traditionally and translates into the high quality of legislation to a significant extent. Furthermore, we emphasise the importance of the particular political culture and political pragmatism that characterise Danish political groupings, especially the so-called historical parties. Both of these features are present in Danish consensus parliamentarism and distinguish it from other stable democracies in Europe. The Basic Law of the Kingdom of Denmark, passed in 1953, established a unicameral Folketing structure based on political and pragmatic rationales. Its provisions concluded the over 100-year evolution of the Danish Parliament

from asymmetric bicameralism and its various variations in subsequent basic laws, to a unicameral Folketing. This structured and streamlined the legislative process and made the Folketing today the most efficient and effective parliament in Europe in carrying out the legislative function.

### KEYWORDS

Basic Law, Folketing, legislative process, pre-parliamentary phase, consensus parliamentarism, quality of law, effects of regulation

### SŁOWA KLUCZOWE

Ustawa Zasadnicza, Folketing, proces ustawodawczy, faza przedparlamentarna, parlamentaryzm konsensusowy, jakość prawa, skutki regulacji

## 1. INTRODUCTION

The constitutional development of the Kingdom of Denmark in the 19th and 20th centuries is much more complex than that of the other countries in the Nordic region. The entry into force of the Basic Law of the Kingdom of Denmark (*Danmarks Riges Grundlov*) of 5 June 1953 marks, so far, the end of a certain stage in the evolution of the constitutional provisions in the part concerning the structure of the parliament. According to § 28, the Folketing consists of a single chamber of no more than 179 deputies, among whom there are two elected in the Faroe Islands and two in Greenland. This is also the moment when some of the institutions and mechanisms formed in the constitutional practice of the past period are transferred to the provisions of the current Basic Law, i.e. their constitutionalisation. In constitutional practice, from the time of the enactment of the first modern Basic Law of the Kingdom of Denmark, which King Frederik VII signed on 5 June 1849, a number of institutions related to state governance processes were established until 5 June 1953, i.e. over the period of more than 100 years, and over time these institutions have become an everyday feature of the functioning of the various organs of the State and have been endorsed as such by the main political groupings, starting with the so-called historical parties<sup>1</sup> and the

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<sup>1</sup> Today, considering the criteria of party genesis and evolution, they are: Liberal Party ('Venstre'), Conservative People's Party ('Højre'), Social Democrats ('Socialdemokratiet') and Radical Liberals ('Radikale Venstre'). Compare Lars Bille, *Partier i forandring: En analyse af danske partiororganisationers udvikling 1960–1995*, Odense Universitetsforlag, Odense 1997, Knut

citizens. These included both those that are also present in other Nordic countries, such as the institution of minority parliamentarism, as well as those that are specifically Danish, such as political agreements (*politisk forliget*) with a pragmatic and consensus-based origin.<sup>2</sup>

The evolution of the structure and functioning of the Danish Parliament progressed from the bicameralism stipulated in the first ‘June’ Basic Law in § 34 – the Rigsdag shall consist of the Folketing and the Landsting, with its asymmetry being confirmed in the mode of election, powers and rules of functioning in §§ 35–44 and 45–71.<sup>3</sup> Bicameralism was maintained in the provisions of subsequent constitutions (*forfatningen*), for example the One-State Constitution (*Helstatsforfatningen*) of 2 October 1855 and the November Constitution (*Novem-berforfatningen*) of 18 November 1863, as well as basic laws, for example the Revised (Amended) Basic Law of the Kingdom of Denmark (*Danmarks Riges Gjennemsete Grundlov*) approved by King Frederik IX on 28 July 1866 and the Basic Law of the Kingdom of Denmark (*Danmarks Riges Grundlov*) of 5 June 1915.<sup>4</sup> Therefore, the purpose of this paper is to synthetically identify and evaluate the solutions adopted during the period of asymmetric bicameralism as regards the implementation of the legislative function. At the same time, we point out new institutions and solutions that emerged during the analysed period within the framework of constitutional practice and were not anchored in the provisions of constitutional documents. Particularly in the interwar period, they resulted from the shortcomings of constitutional and statutory provisions and the dynamics of political processes, which made it easier for political factions to agree to the establishment of a new constitutional institution, the recognition of a particular solution or procedure as a good parliamentary custom, than to debate and argue about the provisions of a new constitution. The aim of this paper is also to present and analyse selected institutions and mechanisms aimed at improving the broadly understood legislative process of the Folketing. Indeed, also during the more than 70 years of life of the current Basic Law of the Kingdom of Denmark, a number

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Heidar, *Parties and Party Systems*, in *Nordic Politics. Comparative Perspectives*, Knut Heidar (ed), Oslo 2004, 40–59, Andrzej Kubka, *Partie i systemy partyjne Szwecji, Norwegii i Dani na przełomie XX i XXI wieku*, Gdańsk 2009.

<sup>2</sup> Compare Helene H Pedersen, *Etableringen af politiske forlig som parlamentarisk praksis*, *Politica* 2011, No 1, 48–67, <[https://politica.dk/fileadmin/politica/Dokumenter/politica\\_43\\_1/pedersen.pdf](https://politica.dk/fileadmin/politica/Dokumenter/politica_43_1/pedersen.pdf)> accessed 10 June 2023.

<sup>3</sup> Compare *Danmarks Riges Grundlov, 5. juni 1849 (Junigrundloven)*, <<https://danmarkshistorien.dk/vis/materiale/danmarks-riges-grundlov-af-5-juni-1849-junigrundloven/>> accessed 10 June 2023. See also this highly interesting article and the discussion around it: Palle Svensson, *Var vore forfatningsfædre demokrater? [Were the fathers of our constitution democrats?]*, *TEMP - tidsskrift for historie* 2012, No 5, 5–27.

<sup>4</sup> For a broader discussion of the origins and specific provisions of the aforementioned acts of law, see Joachim Osiński, *Parlamentaryzm w historii politycznej Danii. Studium ustrojowe*, Warsaw 2022, 95–165 and 207–258.

of institutions and mechanisms have been developed in the Folketing itself, as well as outside of it, in constitutional practice, which, in our view, significantly contribute to the high quality of lawmaking by the Danish Parliament. By the high quality of Danish law we mean its coherence and indisputability in the decisions of the Supreme Court, which has the power to examine the conformity of laws with the Basic Law and of secondary legislation with laws. We associate the quality of the law directly and indirectly with the style of government or political regime in force, the political culture of the political class and society that fosters the existence of consensus parliamentarism and the performance of the legislative function by the Folketing as part of it.

The central hypothesis of this paper is that the high quality of laws passed in the Folketing is largely the result of customary non-legal institutions stemming from constitutional practice, and to a lesser extent of legal regulations – constitutional, statutory or regulatory. Also, as in the case of the Norwegian Storting, it is not only the legislative process in the parliament itself that is significant, although its reliance on pragmatic and consensus elements does improve it considerably. The pre-parliamentary phase in the preparation of draft laws and the participation of a wide range of stakeholders is essential. In this phase, the core of the laws is developed and a preliminary assessment of the financial impact of a given piece of legislation is made. The analyses in this article have been based on the assumptions and categories of neo-institutional methodology by using original documents and literature on the subject by Scandinavian, mainly Danish, authors. When using studies by other authors, we take into account, as far as possible, the research methodology adopted in them. Having in mind that the problems analysed in the article are widely popularised, we keep considerations of the semantic comparativeness of political institutions to a minimum.

## 2. LEGAL BASIS FOR THE ORGANISATION OF THE LEGISLATIVE PROCESS IN THE FOLKETING AND THE QUALITY OF THE LAW

The current Basic Law<sup>5</sup> is quite succinct when it comes to the provisions on lawmaking by the Folketing. It contains only the most important provisions on this function, including: the legislative power bodies (§ 3), the right of initiative of the government (§ 21), the deputies (§ 41), the organisation of the parliamentary year (§ 36), the rule of three readings of a draft law (§ 41 para. 2), the rule of postponement of the third reading of a draft law (§ 41 para. 3), the declaration of draft

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<sup>5</sup> Compare *Danmarks Riges Grundlov af 5. juni 1953*, Udgivet af Folketinget 2009, also *Konstytucja Królestwa Danii*, Translation and introduction Marian Grzybowski, Warsaw 2002.

laws pending after the end of the parliamentary year to have lapsed (§ 41 para. 4), the specific subject matter of a law (for example, § 9, § 20 para. 2, § 31 para. 5, § 32 para. 5, § 42 para. 8, § 43, § 55, § 71 para. 2, § 82, etc.), the referendum on a law (§ 42), the finance law (§ 45), the sanctioning and promulgation of laws (§ 22).<sup>6</sup> There is no provision among these that would even indirectly stipulate a concern or requirement for the lawmaking process to be of high or good quality. However, this requirement has remained a parliamentary custom since the mid-19th century as a result of the status of the deputies and the nature of their mandate.

In the first Folketing Rules of Procedure (*Forretningsorden for folketinget*) of 17 December 1953, after the entry into force of the Basic Law, in Chapter V it says: The draft law (*Lovforslag* §§ 10–15) regulates the procedures related to the three readings of a draft law in the Folketing, including: the possibility of an oral presentation of the draft law in plenary as part of the exercise of the right of legislative initiative, the adoption of a minimum interval of 2 days between the legislative initiative as well as the first reading and between subsequent readings of the draft law, the rule of no amendments to the draft law during the first reading, only the second and third readings, the possibility of postponing the debate on the third reading of a draft law for a minimum of 12 weekdays after the end of the second reading, upon the written request of 2/5 of the Folketing deputies (although this did not apply to all draft laws),<sup>7</sup> and the procedure for holding a referendum on the adoption of a law in special cases upon the request of 1/3 of the number of Folketing deputies. Numerous changes and amendments to the Rules of Procedure in the meantime have led to some expansion of the provisions contained therein relating to the exercise of the legislative function. The current Folketing Rules of Procedure<sup>8</sup> in Chapter IV (*Lovforslag* §§ 10–15) only slightly expand on similar issues in comparison to the original version. These are to some extent similar to those found in other Scandinavian parliaments and elsewhere, where a three-reading procedure for draft laws exists. However, there are also important differences that, according to our research, impact the quality of legislation. Firstly, we need to point out the aforementioned minimum two-day gap between successive readings of a draft law. It is worth mentioning that the first reading should take place no earlier than 5 days after the publication of the draft law on the relevant pages of the Folketing. Secondly, the aforementioned possibility to postpone the debate in the third reading of a draft law for a minimum of 12 weekdays after the end of the second reading at the appropriate request of a group of deputies (§ 41 para. 3 of the

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<sup>6</sup> For a broader analysis of these provisions of law, compare Jens P Christensen, Jørgen A Jensen, Michael H Jensen, *Dansk Statsret*, 3 udgave, København 2020, 161–196, while on the legislative function of the Folketing: compare Poul Andersen, *Dansk Statsforfatningsret*, København 1964, 305–345. For Polish literature on lawmaking in the Folketing, compare Marian Grzybowski, *Dania. Zarys systemu ustrojowego*, Kraków 2017, 122–125.

<sup>7</sup> Compare § 41 para. 3 of the Basic Law.

<sup>8</sup> *Forretningsorden for Folketinget*, Udgivet af Folketinget, København 2021.

Basic Law and § 13 para. 1 of the Rules of Procedure of the Folketing). Although deputies do not make use of this possibility very often, in the cases studied this time, it was used for discussions between representatives of the leadership bodies of the factions in the Folketing and the search for consensus solutions. We should add, however, that this provision does not apply to budget draft laws, supplementary expenditure draft laws, preliminary budget draft laws, state loan draft laws as well as draft laws on naturalisation, expropriation, indirect taxes, nor does it apply in urgent cases to draft laws whose entry into force cannot be postponed due to the purpose of the given law.<sup>9</sup> At the same time, the third reading of a draft law may not take place before the expiry of 30 days from the submission of the draft.<sup>10</sup> Thirdly, the report of the standing committee (*Betænkning af udvalget*) on the draft law prepared after the first reading and before the second reading should, in the event of controversy, contain alternative proposals for legislation, with the final one selected by the Folketing at the third reading. The same applies to the supplementary committee report (*Tillægsbetænkning*) between the second and third reading of the draft. Fourthly, although the chairperson of the standing committee decides how to vote, the committee's opinion in the report is often adopted on the basis of consensus. A vote is only taken if a member or members of the committee formulate a dissenting opinion.

Provisions that constitute recommendations or guidelines on the quality of the law have also been formulated by the Ministry of Justice (*Justisministeriet*), which, through the Legal Department and, within it, the Office for the Quality of Laws (*Lovkvalitetskontoret*), coordinates and oversees, from a legal point of view, the preparation of government draft laws within the individual ministries.<sup>11</sup> The Ministry has published a comprehensive 'Guide to the Quality of Laws' (*Lovkvalitetsvejledningen*).<sup>12</sup> The importance attached to the issue of the quality of laws is

<sup>9</sup> Original text: *Udsættelse kan dog ikke finde sted, for så vidt angår forslag til finanslove, tillægsbevillingslove, midlertidige bevillingslove, statslånslove, love om meddelelse af indfødsret, love om ekspropriation, love om indirekte skatter samt i påtrængende tilfælde forslag til love, hvis ikrafttræden ikke kan udsættes af hensyn til lovens formål (grl. § 41).*

<sup>10</sup> However, practice in the Folketing in recent years indicates that deputies do not always comply with the provisions of the Folketing Rules of Procedure that they have adopted. For example, in the 2019–2020 parliamentary year, 39 draft laws were registered to the exclusion of the 30-day rule, the same was the case in the 2020–2021 parliamentary year, while in the 2021–2022 parliamentary year there were 26 draft laws for which the 30-day rule was not observed. This was most often explained as the result of the global pandemic, as it was in the case with the draft law on ordering the culling of all minks on Danish mink farms. Compare *Danske Advokater*, Paul Møllerup, <<https://www.danskeadvokater.dk/Direktoerens-blog.aspx?ID=21720&PID=92563&Action=1&Year=2023&NewsId=34248>> accessed 21 June 2023.

<sup>11</sup> The Ministry of Finance (*Finansministeriet*) performs similar coordination and supervision of government draft laws, when one considers the financial effects.

<sup>12</sup> Compare *Justisministeriet, Lovkvalitetsvejledningen*, <<https://lovkvalitet.dk/lovkvalitetsvejledningen/>> accessed 21 June 2023. One of the first documents in Denmark to initiate steps on the issue in question was: *Statsministeriets cirkulære nr. 159 af 16. september 1998*. In contrast, the first

also evidenced by another document published by the Ministry addressed mainly to regional and municipal authorities: ‘Guidelines for administrative legislation’ (*Vejledning om administrative forskrifter*).<sup>13</sup> The first document provides a detailed analysis of the main problems that may arise and should be addressed in the draft law. In the introduction, its authors point out that the need for legislation in many cases will be obvious and may, for example, arise from EU law, other treaty obligations or a budget act. New statutory provisions might provide greater clarity on the legal situation and provide citizens with a better opportunity to familiarize themselves with it; moreover, they might simplify the work of public administration and the courts. On the other hand, the fact that an area of life is not specifically regulated by legislation can also offer significant advantages. It might prove more efficient in terms of introducing day-to-day adjustments and taking into account nuances by the administration and the courts, which, in specific cases and considering the general development of society, etc., normalize the legal situation in a given area. Such flexibility, when an area is regulated in detail in legislation, is often lost. Therefore, it is necessary to think about ‘alternatives’ to the traditional lawmaking. According to the authors, these could be:

1. Economic incentives: the market is used as a regulatory instrument to encourage citizens and businesses to behave in certain ways through economic incentives. Examples include subsidy programmes.

2. Self-monitoring: certification and other forms of self-monitoring can be beneficial both for the public sector, which is required to devote fewer resources for this purpose, and for companies, which are relieved of a number of administrative burdens associated with public inspections. Companies can also use certification for marketing purposes.

3. Voluntary agreements: agreements between public sector bodies and companies, for example, oblige the latter to achieve agreed targets, but leave it up to companies to choose the means they use to do so. This can provide flexibility in the organisation of tasks within companies and thus reduce the financial burden, etc. for both the public sector and companies.

4. Process regulation: deciding on the process that will lead to the final outcome, rather than predetermining a specific outcome. This can include requirements that different parties must participate in the process and that the outcome must be reached by consensus. Examples of this type of regulations are jointly

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document with a contemporary name: *Vejledning om lov kvalitet* was published on 3 June 2005 (VEJ No 9801 af 03/06/2005), <<https://www.retsinformation.dk/eli/retsinfo/2005/9801>> accessed 21 June 2023. See also Peter Pagh, *Regelforenklning og lov kvalitet: Gammel vin på nye flasker?*, Administrativ Debat 2002, No 4, 9–13. In Polish: Uproszczenie przepisów i jakość regulacji: stare wino w nowych butelkach?, Jens P Christensen, *Lov kvalitet: »At lave love er ligesom at lave pølser. Man er bedst tjent med ikke at se processen«* [Jakość prawa: „Tworzenie prawa jest jak robienie parówek. Lepiej nie widzieć tego procesu”], *Juristen* 2006, No 3.

<sup>13</sup> Compare *Justisministeriet, Vejledning om administrative forskrifter*, <<https://lovkvalitet.dk/vejledning-om-administrative-forskrifter-2/>> accessed 21 June 2023.

created boards, management boards and committees on which social partners are represented.

5. Information: in areas such as healthcare, energy and transport, there is a tradition of using education and information to change or influence the behaviour of citizens in a desired direction, with significant reduction in regulation by formal provisions.<sup>14</sup>

Some of the above proposals do not require new statutory regulations. It is a basic rule of Danish legislation that the form of the basic legal act, the law, should generally only be used if one intends to bring about uniformity in the legal situation between citizens (individuals and companies, etc.), to impose obligations on citizens or to grant citizens' rights in relation to the public sector.<sup>15</sup> Furthermore, the vast majority of researchers are far from being convinced that only with legal provisions and their multiplication can the quality of the law and its observance be achieved and guaranteed. Historical arguments referring to early medieval law collections or Nordic legal codes (for example, the Jutland Law (*Jyske Lov*) from the time of Valdemar II in 1241) and later examples are often used in this respect.<sup>16</sup>

### 3. CONTEMPORARY CONSTITUTIONAL PRACTICE AND ITS IMPACT ON THE QUALITY OF LAW

Danish constitutional practice related to lawmaking by parliament, both the bicameral Rigsdag until 1953 and the unicameral Folketing until now, is rich and multifaceted. The Danish experience during the period of the bicameral Rigsdag, consisting of the Folketing and the Landsting, especially in the 20th century, does not confirm the widespread belief among Polish lawyers and political scientists that the quality of laws made within the bicameral parliament is better. Such a view can, in our view, be valid only under conditions of the same or close party majority in both chambers. It can also be right if there is a significant asymmetry of the chambers in terms of participation in the legislative process, for example, the exclusion of one of the chambers from influencing the passing of certain draft laws (financial laws). In the Kingdom of Denmark, in political practice since 1920,

<sup>14</sup> Compare *Justisministeriet, Lovkvalitetsvejledningen*, 12, <<https://lovkvalitet.dk/wp-content/uploads/sites/5/2021/01/Vejledning-om-lovkvalitet-1.pdf>> accessed 21 June 2023. A broader analysis of these proposals is beyond the scope of this article.

<sup>15</sup> Compare *ibid*, 12.

<sup>16</sup> Compare Jens P Christensen, *Lovgivningskvalitet og enkeltsagsstyret lovgivning*, Juridisk Institut, Aarhus Universitet 2013, No 10, 85–100, <[https://www.nordiskjurist.org/wp-content/uploads/2013/10/http\\_\\_\\_jura.ku\\_.dk\\_njm\\_38\\_jens\\_peter\\_christensen.pdf\\_.pdf](https://www.nordiskjurist.org/wp-content/uploads/2013/10/http___jura.ku_.dk_njm_38_jens_peter_christensen.pdf_.pdf)> accessed June 2023.

we have seen an increase in contradictions in the bicameral Rigsdag, rooted in the different political-ideological majorities found in the Folketing and Landsting. The existence of these different majorities, in turn, had systemic roots stemming from the structural and functional deformations existing in the electoral system.<sup>17</sup> This made it difficult for the Rigsdag to perform its legislative tasks (countering the negative effects of the internal banking crisis, the need for social reforms, reforming foreign trade financing, etc.). Eventually, in the 1920s, after several political attempts by the Social Democrats with varying degrees of success, it was possible in systemic practice to create mechanisms and institutions for pragmatically resolving conflicts between the government party(ies) and the opposition.

### 3.1. SPECIFIC ARRANGEMENTS UNDER DANISH MINORITY PARLIAMENTARISM

The classic rule of parliamentary systems, according to which the government, in order to perform its tasks, should enjoy the confidence of the majority of parliamentary deputies, has taken a specific form in Denmark and is shaped, as in Norway, by original institutional constructs and solutions. Political practice does not equate ‘confidence’ with an explicitly formed majority and its voted support for the composition of the government and its agenda. Although the ultimate consequence of the aforementioned rule is the possibility of a motion of no confidence in the prime minister, the minister and the government as a whole, such situations are extremely rare in Danish constitutional practice. This is partly due to the fact that if a vote of no confidence in the prime minister or the government as a whole is passed, the prime minister can exercise his right to dissolve the Folketing and call early elections. After the elections, on the other hand, if the government party or parties and parties supporting the government win the support of a minimum of 90 deputies in the Folketing, the prime minister can continue in office, as can individual ministers. Among these deputies may be representatives of parties that support the government’s actions, even though they are not bound by a formal coalition agreement in this regard. Parties that help a *de facto* minority government gain a majority are referred to as the **government’s parliamentary base** or called supporting parties (*regeringens parlamentariske grundlag* or *støttepartier*).<sup>18</sup> This creates the modern logic of a consensus parliamentary system. At the

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<sup>17</sup> Compare Joachim Osinski, *Parlamentaryzm w historii politycznej Danii. Studium ustrojowe*, op. cit., 259–275. As recently as the 1932 Landsting election, 42.12% of voters voted for the Social Democrats, which gave them 27 seats, while the Liberals received 22.14% of the vote, which translated into 28 seats.

<sup>18</sup> Compare Flemming J. Christiansen, Helene H. Pedersen, *Regeringsgrundlag i Danmark. Hvordan benytter regeringen dem, og hvordan reagerer oppositionen?*, *Politica* 2014, No 3, 362–385.

same time, it means that not all parties that do not have representation among ministers (or other government positions) are opposition parties. Nowadays, the 'real' opposition usually consolidates around one or two of the so-called 'historical parties', and its actions are pragmatic and consensus-based, with little in the way of competition and certainly no rivalry.<sup>19</sup>

The Danish political phenomenon of **minority coalition governments** is a natural part of political practice there. Researchers outside the Nordic region educated on the mythologised rules of the Westminster system sometimes ask a question that is legitimate in their view: what is the purpose of forming a government party coalition if it still allows there to be 'only' minority support for the government in the Folketing? In simple terms: why share power and ministerial positions with others when such a situation does not allow you to build a parliamentary majority for the government anyway? This also applies to researchers in Poland, some of whom have yet to encounter a political culture other than the rival political culture prevalent among domestic political groups. Therefore, we strive to patiently and substantively explain the differences and nuances between stable democratic systems, including the specific Scandinavian minority parliamentarism, and fluid systems whose fate is determined by periods of 'ebb' and 'flow' of formal democracy. The situation of the existence of minority coalition governments is a political investment in the future, it is a test of the ability of sometimes programmatically distant parties to cooperate and reach consensus, it is an action in favour of the *raison d'être* or the common good. It creates opportunities to involve a wider range of parliamentary groups in legislative activities, which, according to our research, has a positive impact on the quality of legislation. For the parties that 'lost' the parliamentary elections, it is a chance to implement some of their program assumptions. After all, it is not the 'art of governing' to implement a party's program (if you have one) when you have a parliamentary majority, politics is the art of implementing programmatic intentions also, and perhaps especially, when you remain in the minority.<sup>20</sup> The aforementioned occurrence of a situation in which the beneficiaries of governance are parties that form the parliamentary basis of government, even though they do not form a formal coalition and do not hold ministerial positions, is a natural political reality in Denmark.<sup>21</sup> On the other hand, we can fully justifiably talk about the

<sup>19</sup> Compare Flemming J Christiansen, Erik Damgaard, *Parliamentary Opposition under Minority Parliamentarism: Scandinavia*, *Journal of Legislative Studies* 2008, Vol 14, Issue 1–2, 46–76. Also: Christoffer Green-Pedersen, Lisbeth Hoffmann-Thomsen, *Bloc Politics vs Broad Cooperation. The Functioning of Danish Minority Parliamentarism*, *Journal of Legislative Studies* 2005, Vol 11, Issue 2, 153–169.

<sup>20</sup> Compare Flemming J. Christiansen, *The Inclusion of Challenger Parties into Legislative Accommodations in Danish Parliamentary Politics*, Paper, ECPR Conference, Marburg, September 2003.

<sup>21</sup> Compare Erik Damgaard, *Party Coalition in Danish Law-making, 1953–1970*, *European Journal of Political Research* 1973, Vol 1, 35–66.

phenomenon of the **opposition's legislative agency**. The argument that we do not exercise executive power, do not have a parliamentary majority and, therefore, cannot positively shape legal reality through our own draft laws, would be treated in the Danish or Swedish parliament as an admission of a lack of competence, negotiating skills, organizational capacity and ability to effectively conduct party politics.<sup>22</sup> Pragmatic and consensus thinking about the logic of the parliamentary system prevails in Danish conditions and brings good results not only politically but also economically and socially.<sup>23</sup> Parties have become 'accustomed' to successive minority governments, which have the advantage of being able to seize power immediately, without the often long pauses necessary to form coalitions and without the accompanying bargaining and conflicts in the political environment, which always leave their mental mark and affect the subsequent behaviour of politicians. Dragging competition or, worse, party rivalry beyond the electoral period (permanent election campaign) leads to the destabilization of the entire political system and relations in society to the detriment of all political actors, which is rather an elementary conundrum on systemic grounds.

Minority parliamentarism, a common feature of Scandinavian parliamentary systems since the interwar period, is also most common today. Of the 35 governments that existed in Denmark between 1945 and 2023 (a period of 78 years), the vast majority, or 31 to be more precise, were minority governments, of which 18 were minority coalition governments and 13 were minority one-party governments. There were only 4 majority governments with a coalition formula and no majority one-party government during the mentioned period, which is an interesting peculiarity of the Danish political system.<sup>24</sup>

### 3.2 POLITICAL AGREEMENTS AND THEIR IMPORTANCE FOR THE QUALITY OF LEGISLATION

The institution of political agreements (*Politisk forliget*) was shaped in Denmark during the interwar period.<sup>25</sup> The term began to be used during the Great Economic Crisis of 1929–1933 to refer to the most important arrangements between the ruling parties and the opposition on issues aimed at preventing and

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<sup>22</sup> For a broader analysis of the so-called negotiated parliamentarism, compare Ingvar Mattson, *Förhandlingsparlamentarism. En jämförande studie av Riksdagen och Folketinget*, Lund 1996.

<sup>23</sup> Compare Ludger Helms, *Studying Parliamentary Opposition in Old and New Democracies: Issues and Perspectives*, *The Journal of Legislative Studies* 2008, Vol 14 (1–2), 6–19.

<sup>24</sup> Compare Joachim Osiński, *Parlamentaryzm w historii politycznej Danii. Studium ustrojowe*, op. cit., 585–587.

<sup>25</sup> See in more detail: Flemming J Christiansen, *Politiske forlig i Folketinget. Partikonkurrence og samarbejde*, Aarhus 2008.

counteracting the negative effects of the crisis on society and the economy.<sup>26</sup> Talks on the agreement were held between the following government parties: Social Democratic Party and Radical Liberal Party and the largest opposition grouping: Liberal Party. The last round of the most important of these began on Sunday, 29 January 1933, at the residence of Social Democratic Prime Minister Thorvald Stauning at No 10 Chancellor Street. Hence the later term: The Chancellor Street Agreement (*Kanslergadeforliget*), which has entered Danish political history.<sup>27</sup> Those taking part in the negotiations from the government side were Prime Minister Thorvald Stauning, Agriculture Minister Kristen Bording, Trade Minister Christen Nielsen Hauge, Social Democratic MP Niels Peter Fisker, Foreign Minister Peter Munch, Interior Minister Bertel Dahlgaard, both from the Radical Liberal Party, and Niels Frederiksen MP for the same party in the Folketing. On the side of the opposition Liberal Party were: former Prime Minister Thomas Madsen-Mygdal, Folketing MP Oluf Christian Krag and Landsting MP Henrik Andreas Hauch. After 18 hours of negotiations, which ended on Monday around 4 a.m., agreement was reached on key economic issues (including devaluation of the Danish krone against the pound sterling, agricultural loan repayment concessions, and restrictions on pig production) and social reforms, including: the introduction of universal social insurance, the establishment of vocational guidance and unemployment insurance, occupational accident insurance, and a universal welfare system. At the same time, a ban on strikes and lockouts was established. The laws passed in the Riksdag as a result of the agreement, prepared under the direction of Minister of Social Affairs Karl Kristian Steincke, became the basis for the interwar construction of the Danish welfare state.<sup>28</sup> Even if the Chancellor Street agreement was not novel in its form, it did indicate that such a far-reaching and comprehensive agreement could be achieved through democratic means. What was special, therefore, was the decision-making process (democratic), the degree of intervention (deep political intervention in areas hitherto determined by the market), and the scope of intervention (affecting many different areas of social life). The agreement also resulted in increased public confidence in the government and the Rigsdag during the difficult times of the Great Economic Crisis. It made it possible to attract both ruling and opposition parties, especially the Liberal Party, to work together on necessary legislation. This undoubtedly

<sup>26</sup> Compare Mogens R Nissen, *Det nationale kompromis – Kanslergadeforliget i 1933*, Landbohistorisk Tidsskrift 2010, No 1, 50–77. On the economic and social conditions and the effects of the agreement, compare Joachim Osiński, *Parlamentaryzm w historii politycznej Danii. Studium ustrojowe*, op. cit., 283–293.

<sup>27</sup> Compare *Kanslergadeforliget 1933*, <<https://danmarkshistorien.dk/leksikon-og-kilder/vis/materiale/kanslergadeforliget-og-dansk-politik-i-1930erne/>> accessed 23 June 2023.

<sup>28</sup> Previous regulations on the issues indicated were ‘scattered’ and contained in some 55 pieces of legislation. The provisions of the aforementioned new four consolidation laws came into force on 1 October 1933. Compare Karl Kristian Vilhelm Steincke, *Dansk Biografisk Leksikon*, <[https://biografisk.leksikon.lex.dk/K.K.\\_Steincke](https://biografisk.leksikon.lex.dk/K.K._Steincke)> accessed 23 June 2023.

influenced the shape of reforms constituting the institutions of the welfare state without being dominated by the Social Democratic Party, but based on a broader political consensus. The same was true in neighbouring countries, which testifies to the theoretically and ideologically diverse origins of the Nordic welfare state.<sup>29</sup>

A similar settlement has been used successfully many more times in political history and has always allowed jointly agreed draft laws to be carried out, with a positive impact on their quality. More contemporary examples include the 1979 agreement on the Master Plan (*Helhedsplanen*) for the strategic reorientation of the Danish economy and the rebalancing of the balance of payments,<sup>30</sup> the May Agreements (*Majforliget I and II*) of 1980 and 1981, concerning the introduction of an austerity regime in public finances, the Rio Bravo Agreement (*Rio Bravo-forliget*) of 24 October 1983, containing agreed support by the government parties (Social Democracy, Radical Liberal Party) and the opposition Progress Party prior to the third reading of the 1984 budget draft law,<sup>31</sup> and the Budget Agreement (*Finanslovsforliget*) of 1 December 1989.

Nowadays, a similar role is played by political agreements (*politisk aftale*) between the ruling party or parties and opposition parties in various configurations depending on the merits of the issue. Most often, the range of the issues negotiated is not too broad, so as not to limit the effects and efficiency of the parliamentary groups' communication. Examples of such issues include the problem of reducing fees and investments to improve public transportation. The partners of the government parties, which included: Social Democrats (Prime Minister H. Thorning-Schmidt), the Radical Liberal Party and the Socialist People's Party, were the Danish People's Party and the Common List-The Greens. Agreed joint decision in 2012 binding on the parties: in each of the years 2013-2017, the parties will allocate a total of DKK 57 million for public transportation in the outermost regions. The funds will be used to support the development of new transportation routes, upgrading rolling stock, etc. Another problem was solved in the political agreement signed on 15 November 2012 on the strategy for photovoltaic and other small-scale renewable energy installations (RES), where the parties to the agreement in addition to the government parties mentioned were: Liberal Party, Conservatives, Danish People's Party and Common List-The Greens. A joint binding

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<sup>29</sup> In the Polish literature, this was pointed out earlier by Wojciech Nowiak, *Nordycki model „welfare state” w realiach XXI wieku* [Nordic Model of 'Welfare State' in the Realities of the 21st Century], Poznań 2011, 7–30.

<sup>30</sup> Compare *De økonomiske balanceproblemer i 1970'erne*, <<https://danmarkshistorien.dk/vis/materiale/de-oekonomiske-balanceproblemer-i-1970erne/>> accessed 24 June 2023.

<sup>31</sup> In the Finance Committee, before the third reading, amendments were submitted to the draft law on the 1984 budget, 227 amendments by ministers and 346 amendments in minority motions from among committee members. This is a kind of record of the Folketing's legislative activity in the 20th century. Compare *Tillægsbetænkning over Forslag til finanslov for finansåret 1984*, Folketingstidende, Folketingsåret 1983–84, 497 and following. Also: Joachim Osiński, *Parlamentaryzm w historii politycznej Danii. Studium ustrojowe*, op. cit., 492–494.

decision was made that the 22 March 2012 Energy Agreement will include a pool of funds to promote the energy-efficient use of renewable energy in companies' production processes. The funds will be set aside at a maximum of DKK 50 million per year from 2015 to 2020.<sup>32</sup> Another example is the adjustment of competencies under the 2007 municipal reform in Denmark to be carried out in 2014. The partners of the government and the groups supporting it were all opposition parties and the binding agreement, signed on 26 June 2013, was that the issuance of landfill permits would be transferred from the tasks of local municipalities to the State level, and the competence to issue permits for resource extraction would be transferred from the tasks of municipalities to local regions. At the same time, it was agreed that task adjustments would be made by 1 July 2014.<sup>33</sup> Migration and integration of migrants were important issues that they decided to agree on as part of political agreements. An example of a broad political agreement on this matter between different parties was the agreement signed on 1 November 2017 between the government, Social Democracy, Danish People's Party, Alternative, Radical Liberal Party and Socialist People's Party on the allocation of the 2018 pool of funds in the area of immigration and immigrant integration. The agreement stipulated the allocation of a total of DKK 250.4 million from a fixed pool, would be distributed after arrangements as follows: DKK 80.7 million in 2018, DKK 35.8 million in 2019, DKK 51.1 million in 2020 and DKK 82.8 million in 2021.<sup>34</sup> Another example was the 7 February 2018 agreement on marriage rules between the government, the Danish People's Party and the Social Democrats. The parties have pledged to work toward strict, balanced and realistic rules for family formation with integration at its core.<sup>35</sup> In relation to the above, the political agreement on obtaining Danish citizenship concluded on 29 June 2018 between the government, Social Democracy and the Danish People's Party was an important issue. The agreement concerned the establishment of general guidelines that referred to the preparation of draft laws on granting citizenship (naturalization) by the Minister of Immigration and Integration, in accordance with § 44(1) of

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<sup>32</sup> Compare *Aftale mellem regeringen (Socialdemokraterne, Det Radikale Venstre, Socialistisk Folkeparti) og Venstre, Dansk Folkeparti, Enhedslisten og Det Konservative Folkeparti*, <[https://ens.dk/sites/ens.dk/files/EnergiKlimapolitik/sol\\_aftale\\_151112finaltilweb.pdf](https://ens.dk/sites/ens.dk/files/EnergiKlimapolitik/sol_aftale_151112finaltilweb.pdf)> accessed 24 June 2023.

<sup>33</sup> Compare *Aftale mellem regeringen, Venstre, Dansk Folkeparti, Enhedslisten, Liberal Alliance og Konservative om: Rammer for justering af kommunalreformen* (26. juni 2013), <<https://www.medcom.dk/media/3208/aftale-om-rammer.pdf>> accessed 24 June 2022. It should be added that the aforementioned adjustments were made after evaluating the effects of the municipal reform at the time specified in the contract.

<sup>34</sup> Compare *Aftale om udmøntning af satspuljen for 2018 på integrationsområdet*, <<https://www.regeringen.dk/aktuelt/publikationer-og-aftaletekster/aftale-om-udmoentning-af-satspuljen-for-2018-paa-integrationsomraadet/>> accessed 24 June 2023.

<sup>35</sup> Compare *Aftale om regler for ægtefællesammenføring*, <<https://www.regeringen.dk/aktuelt/publikationer-og-aftaletekster/aftale-om-regler-for-aegtefaellesammenfoering/>> accessed 24 June 2023.

the Basic Law. One of the latest political agreements of the ruling and opposition parties is the agreement on the regions' finances for 2024 ensuring the development of the health care system. The Danish government and the Danish regions have reached an agreement on the regions' finances for 2024, providing further investment in Denmark's health care system of an additional DKK 1.35 billion. The agreement also sets a responsible framework for the regions' level of capital spending of DKK 6.95 billion in 2024, while agreeing that the regions must reduce their administrative spending.<sup>36</sup> To sum up, if the political agreements of the government (government parties) with the opposition (opposition parties) that were often concluded in the systemic practice of Danish parliamentarism were of a non-binding nature and were rather a kind of gentlemen's agreement, the political agreements signed in recent years carrying concrete legislative effects are binding on the parties. Due to the broad spectrum of parties involved in their preparation, the regulations adopted are of high quality. The institution of political contracts under discussion should be considered a peculiar feature of the relationship between the government and parliamentary opposition in Denmark.

### 3.3. THE SPECIAL ROLE OF THE FOLKETING'S STANDING COMMITTEES IN ENSURING THE QUALITY OF LEGISLATION

Traditionally, standing committees of parliaments and their work are pointed to as the most important stage in shaping the final content of legislative bills. The mode of work of these committees in various parliaments and its effects has been repeatedly analysed in the literature. In the current term of the Folketing, which began after the 31 October (Faroe Islands) and 1 November 2022 elections. In Denmark and Greenland, 30 standing committees have been established in the Danish Parliament, 25 of which have 29 members each. Other committees have 17 members each (finance committee, civic affairs committee, election review committee) or 21 members (Folketing rules committee, epidemic committee).<sup>37</sup> The aforementioned provisions of the Rules of Procedure of the Folketing since 1953 have not specified in too much detail their internal organization and mode of work, leaving room for procedures and mechanisms forming or already formed in system practice. The latter certainly includes the decision by committee chairmen to refer the draft law to the relevant standing committee and for a second reading without voting on the matter. Consensus is the deciding factor, and votes are taken at the express request of a committee member and then decided by a simple major-

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<sup>36</sup> Compare *Aftale om regionernes økonomi for 2024 sikrer udviklingen af sundhedsvæsenet*, <<https://fm.dk/nyheder/nyhedsarkiv/2023/maj/aftale-om-regionernes-oekonomi-for-2024-sikrer-udviklingen-af-sundhedsvaesenet/>> accessed 24 June 2023.

<sup>37</sup> Compare Folketinget, *Om udvalgene*, <<https://www.ft.dk/da/udvalg/udvalgene>> accessed 24 June 2023.

ity. The same is true of the number of committee reports (reports) on the draft law. There may be one report, after the first and before the second reading, there may be two, after the first and after the second reading, and in some cases there is an additional (supplementary) report after the second reading. Decisions on this issue are made in plenary meetings of the Folketing, often by the chairman of the meeting on the rule of consensus or, when there is a formal motion, by relative majority vote. At the same time, due to the use of the institution of **exclusionary agreements** (*clearingaftaler*), similar but not identical to the ‘pairings’ that occur in the House of Commons mostly during the first and second readings of draft laws, votes are not frequent. The aforementioned institution involves informal agreements between party groups that ensure that a certain number of deputies from each party group in proportion to its size can be exempted from voting in the House without affecting the majority in the Folketing. When an MP is ‘excluded’, he or she does not vote in the plenary chamber on a given day, but can stay in the Folketing and conduct other political activity and fulfil his or her duties. It is important that a quorum of 90 deputies is guaranteed during the plenary session.

Most important, however, is the committee’s substantive work on improving draft laws, the vast majority of which come from individual ministries. Draft laws submitted by an MP or group of MPs come from opposition parties or sometimes from parties supporting the government. It is not a rule that all government projects are passed, and in different parliamentary years we had a varied situation in this regard. For example, in the 2001–2002 parliamentary year, only 171 out of 229 government draft laws were passed, which constituted 74.7%. Similarly, in the 2004–2005 parliamentary year, when only 225 out of 312 initiated government drafts were passed, which was 71.1%. The situation was different in the parliamentary year 2002–2003, 203 draft laws were submitted, while 201 drafts were passed, which was 99%. And all this during the period of the centre-right government (Liberal Party, Conservative People’s Party) headed by A. Fogh Rasmussen. Some of the institutions formed in system practice have found their way into legislation over time. Thus, in order to perfect the work on draft laws, § 8(5) of the Rules of Procedure provides for the possibility of inviting deputations (delegations) who have requested to appear before the committee. Their appearance in the committee follows the guidelines of the Folketing Bureau. Based on § 8(9) of the Rules of Procedure, standing committees sometimes make use of the **institution of hearings** (*høring*) known earlier, inviting stakeholders important to the substantive side of the project, including civil society organizations, importantly of a non-political nature. Both of these institutions sometimes have a significant impact on improving the draft law under way and its quality. Finally, regulations have been expanded on the committee’s ability to ask the relevant minister for an oral consultation (*samråd*) at a committee meeting, details of which are included in the Rules of Procedure § 8(6), (7) and (8).

However, the most frequently used institution during the work of a standing committee for obtaining broad information on a pending project from the minister or other government functionaries are **inquiries from standing committees**. If the traditional interpellations and inquiries raised in plenary sessions of the Folketing are more for the parliament's scrutiny function vis-à-vis the government, like the questions raised to the prime minister during the Folketing's question hour (*spørgetimen*) held every other Tuesday, committee inquiries are related to the legislative function and efforts to create high-quality laws. In the decade selected for our study, they were as shown in Table 1.

Table 1

## Inquiries from Folketing standing committees from 1996 to 2006

Parliamentary year	1996-1997	1997-1998	1998-1999	1999-2000	2000-2001	2001-2002	2002-2003	2003-2004	2004-2005
Inquiries from standing committees	8 562	8 417	8 880	8 649	8 341	7 916	8 765	9 478	9 319

**Source:** own study based on: *Folketingstidende* from 1996–2005, <<https://www.folketingstidende.dk/da/dokumenttyper>> accessed 25 June 2023.

Accordingly with the data in the table for the decade 1996–2005, it is possible to indicate a minimal increase in the total number of inquiries from standing committees at the end of the decade. However, throughout the period under review, the number of inquiries to members of the government is impressive, and testifies to the enormous amount of work by members of the standing committees during each parliamentary year directed at improving draft laws but also resolutions. This is due to the fact that some of the inquiries also concerned draft resolutions (*Beslutningsforslag*). The special importance of the work of the committees in carrying out the legislative function can also be seen by comparing the number of inquiries to ministers and the prime minister made during plenary sessions versus those from standing committees. For example, in the parliamentary year 1996–1997, MPs submitted 3 454 inquiries, in 2000–2001 the number rose to 4 115 inquiries, in 2004–2005 the number rose again to 5 964 inquiries, but this is ‘only’ 2/3 of those submitted by committees in the same years. We consider the use of the institution under discussion by the committees to be the most important element in the Folketing legislative process affecting the quality of the laws that are passed.

We should add that since the 1990s, the Folketing has been referred to in the literature as a ‘working parliament’<sup>38</sup> and its committees as ‘consensus committees’, as negotiations between committee members often lead to a consensus

<sup>38</sup> Compare David Arter, *Scandinavian Politics Today*, Manchester 1999, 200–223.

that finds expression in the final report.<sup>39</sup> E. Damgaard further pointed to the Folketing as a ‘debating parliament’ by tabulating its deliberation time by year. Thus, for example, in the parliamentary year 1998–1999, there were 496 hours of deliberation, in 2001–2002 the number rose to 616 hours of deliberation, and in the parliamentary year 2003–2004 it was already 724 hours.<sup>40</sup> We leave to those interested the comparative task of analysing similar issues in other parliaments of democratic countries, for the Folketing is a leader not only in the Nordic countries.

## CONCLUSIONS

The analyses carried out of both legal regulations and system practice convince us of the many factors that are important to the high quality of lawmaking by the Folketing. Within the framework of Danish parliamentarism, we have highlighted two institutions that have an established importance in constitutional practice – the essence and nature of Danish minority parliamentarism and the essence and importance of political agreements for the lawmaking process. We have also synthesized the most important institutions inside the Folketing from the point of view of improving draft laws and resolutions during the legislative process, namely standing committees. In the case of committees, the scope of regulation of their work in the Rules of Procedure has expanded to include the most important procedures and mechanisms that have proven themselves in the system practice of the past few decades. However, we strongly argue, based on our research, that the quality of lawmaking in the Folketing depends mainly on the detailed rationing of the legislative process, or the formal aspects of legislative technique at the draft law or resolution stage. Confirmed, in our view, is the hypothesis that fundamental to the quality of Danish law is its creation based on consensus and pragmatic elements inherent in the parliamentary system and its functioning. Danish parliamentarism can be spoken of as being consensus (agreement-based or negotiation-based) parliamentarism in the performance of all its functions in the political system.

The high quality of legislation passed in the Folketing and the outstanding efficiency in the organization of the legislative process are fundamentally determined by customary extra-legal institutions stemming from systemic practice,

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<sup>39</sup> Compare Ingvar Mattson, *Negotiations in Parliamentary Committees*, in *The Bargaining Democracy*, Lars-Göran Stenelo & Magnus Jerneck (eds), Lund 1996, 61–144.

<sup>40</sup> Compare Erik Damgaard, *Change and Challenges of Danish Parliamentary Democracy*, in *The Madisonian Turn. Political Parties and Parliamentary Democracy in Nordic Europe*, Torbjörn Bergman & Kaare Strøm (eds), Ann Arbor 2013, 82–83.

the political culture represented by the parliamentary groups and the advanced level of professionalisation of the Danish parliament. This professionalisation is primarily expressed in the orderly cooperation between the legislative and executive branches in the legislative field. Also important, as in other Scandinavian countries, is the pre-parliamentary phase of work on government draft laws, in which a wide range of stakeholders are involved, with the Ministry of Justice playing a coordinating and oversight role vis-à-vis the drafts being prepared.

The fundamental question that arises after the study and the attempt to generalize its results is: is it possible to use the experience and solutions formed in Danish constitutional practice and legal regulations in the field of making high quality laws in other countries? In our view, this is possible, despite the fact that the stimulation of certain processes in the regime practice of other countries due to the difference in the culture of the political class and society, may be a certain difficulty. In Poland, given the established parliamentarism of extreme competition or even rivalry and such a political culture, this would be particularly difficult. A good start is to popularize the Danish experience in this regard, first in academia and then in broader opinion circles in society. Parliament's enactment of high-quality laws will benefit everyone: policymakers, citizens, the economy and society alike.

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