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Denmark to Iceland. A Case without Precedence: Delivering Back the Icelandic Manuscripts 1971-1997

Erland Kolding Nielsen

Director General

Royal Library, Denmark.

Committee on Copyright and other Legal Matters (CLM)
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Abstract:

The paper takes its starting point in 1997 when Denmark returned the last two of 1,807 so-called Norse manuscripts from the Middle Age to Iceland which became a sovereign state in 1918 and finally broke away from the union with Denmark in 1944. The origin of the manuscripts and transfer to Denmark in the 17th and 18th century is outlined, the legal status of the Icelandic claims for having the manuscripts returned in the 20th century and the political and legal character of the decision after lengthy debates within both countries to return them are explained. The scope of what was really a gift from Denmark to Iceland is briefly described. Finally, the legal status of the case and its possible precedence with respect to international law is discussed.

June 19, 1997 is a day that will be remembered as a very special day in the thousand year old history of Denmark and Iceland. On that day, the President of Iceland, the Icelandic Minister for Education and 40 specially invited guests from Denmark all attended an unusual ceremony at the University of Iceland. On behalf of the *Arnarnagænean Commission*, professor Kjeld Møllgaard, Rector of the University of Copenhagen, accompanied by the Director General of the Royal Library, the National Library of Denmark, Erland Kolding Nielsen, handed over the last two of the original 1,807 manuscripts, which, under the provisions of the state treaty of 1970, were to pass from Denmark to Iceland over a 25-year period starting in 1971. One of the manuscripts was Iceland's oldest preserved manuscript, a fragment from a collection of sermons dating from about 1150 AD (AM 237 folio). The other was the illuminated *Stiorn* bible manuscript, a translation in Icelandic from the Old Testament, dating back to about 1350 AD (AM 227 folio), and that which most closely resembles the

magnificent bible manuscripts from the rest of Europe. On April 18, the last consignment of manuscripts, 16 large sealed parcels mainly containing archive material in the form of legal documents, known as *diplomas* was loaded in Copenhagen onto the Danish naval fishery inspection vessel *Vædderen* (the Ram). The valuable cargo was met on its arrival in Iceland on May 6 by large numbers of Reykjavik citizens in circumstances similar to those that greeted the first consignment, which had also been transported by another *Vædder*.

Some of the documents in the first shipment were *Flatøbogen* (the Book of the Island of Flatoe) and *Kongebogen* (the King's Book, *Codex Regius*), two of the most famous of all Icelandic manuscripts, known to most Danes and Icelanders as well, and a delegation of Danish ministers and members of parliament had accompanied the manuscripts on their journey.

Thus the day marked the end of several generations of discussions, two legal cases, seemingly endless negotiations and 25 years of restitution agreements. A unique question of Nordic political and cultural history had found a fitting solution. Unique in legal terms, in the eyes of the people, *and* from a cultural and political perspective.

The Legal Situation from a Historical Point of View: The Danish-Icelandic Union 1380-1944

By virtue of the marriage of the daughter of Danish King Valdemar Atterdag (who died in 1375), Margrethe, to the Norwegian King Håkon VI (died 1380), Norway in 1380 became part of a union with Denmark, along with the so-called secondary countries of Iceland, the Faroe Islands, the Orkneys and Greenland. Margrethe's son Oluf (1371-87) thus became king, first of Denmark, in 1376, and later of Norway in 1380 and, ruling in place of her son as "the Mistress and Husband of Denmark and Norway", Margrethe also took Sweden in 1389 and effected the Kalmar Union between the Nordic kingdoms in 1397. The union dissolved in 1523 on Sweden's secession, but after Norway was yielded to Sweden in 1814 as part of the treaty of Kiel at the end of the Napoleonic wars, Iceland together with the Faroe Islands and Greenland, remained under Danish rule until 1918, when it became an independent entity in the union with Denmark. For most of the long period of union, Iceland was in fact part of Denmark and like the other countries was ruled by the Danish monarchy from Copenhagen. The Icelandic parliament – *Altinget* – had already at the start of the 20th century appealed to the Danish government for the return of the Icelandic documents, after 1918 the public *archives* of the Icelandic part of the monarchy located in the former mutual capital Copenhagen were returned, and two years after the dissolution of the union in 1944 the Icelandic government raised the issue of manuscripts again. This time they claimed the return of those *manuscripts* that was – and could - not be considered to be part of the administrative archives but part of the Icelandic *cultural tradition* and were kept in Copenhagen. Some of these so-called "Icelandic manuscripts", as they were known, were kept at Denmark's national library, *the Royal Library*, and others were kept as part of the Arnarnaganean Collection at the University of Copenhagen, owned by the independent institution, the *Arnarnaganean Foundation*.

The History of the Origin and Contents of the Manuscripts

After Christianity was introduced in 1000 AD as the state religion, a tradition of Icelandic writing began to develop in the peasant society of Iceland, concentrated initially in the bishoprics of Skálholt (established in 1056) and Hólar (established in 1106), but later

spreading to the many farms in the area. The famous *sagas* were written, first on parchment, and centuries later also on paper, stories relating the history of the Icelanders and their way of life from the period of settlement from about 870 to 930, known as the landnam period, through the Viking ages and later times. The oldest manuscripts date from the later part of the 12th century but most originated in the 14th and 15th centuries. The manuscripts contain accounts of local history and tell of the lives of famous Icelanders, but they also contain historical material of more general interest, for example, sagas about the Norwegian and Danish kings and queens, skaldic poetry and literature, religious writings, legal documents and, lastly, manuscripts documenting the principles of Icelandic law, as either originals or transcripts of the so-called *diplomas*. More than 3,000 of these Norse manuscripts have now come to light, and they far exceed in length and number any similar documents found in the rest of the Nordic area. They are the special contribution of Icelandic history to the world, a history that cannot boast of great political moments, military prowess, trading expertise, magnificent architecture or any other cultural contribution of special significance. Their significance lies in the fact that a wealth of literature was produced by a population which during Viking times and the middle ages even in prosperous times numbered no more than between 50,000 and 60,000 people.

During the 17th and particularly the 18th centuries, these manuscripts were collected by the Icelanders themselves, often by the clergy, and sent to the Danish-Icelandic monarch in Copenhagen. *Flatøbogen* (Flateyjarbók, Old Royal Collection No.1005, in 2 volumes, folio), containing the *Saga of the Greenlanders* and several sagas about the Norwegian kings, was sent in this way by Bishop *Brynjólfur Sveinsson* to King Frederik III in 1656 and likewise, in 1662 *Codex Regius* containing poetry from the Elder Edda, for example, the poem “The *Völuspá*” (*the Prophecy of the Volva*, Old Royal Collection No. 2087, 4°). On his journeys throughout Iceland from 1702-12, the learned Icelandic philologist, *Arni Magnússon* (1663-1730) systematically collected several thousand manuscripts, which he bequeathed at his death to a special foundation under the University of Copenhagen, the only university existing at that time in the countries of the dual Danish-Icelandic monarchy. This collection undoubtedly saved many manuscripts from being destroyed during the harsh years of the 17th and 18th centuries. Since then, the manuscripts have been in the keeping of the foundation, which since 1772 has been under the particular management of the Arnamagnean Commission. To this day, in close cooperation with the Arnamagnean Institute, a research institute established under the University of Copenhagen in 1956, the Commission continues to take the lead in several projects, including the huge compilation work involved with *A Dictionary of Old Norse Prose*, covering the period from 1100-1540 (3 volumes 1989-2000, 12 planned); the preparation of 25 volumes in two series that have been published on the subject; and the granting of scholarship awards. The Rector of the University of Copenhagen is ex-officio chairman of the commission, and the Professor of Icelandic at the University and the Director General of The Royal Library number among the *ex-officio* members of the commission.

Return of the Manuscripts

The Icelandic insistence on the return of the manuscripts, which were also seen as part of the *Danish* cultural heritage, raised intense and on occasion impassioned public debate in Denmark during the 1950s and 1960s. This was not least because the claim included not only the manuscripts held in public institutions, that is, in the Royal Library, but also those owned privately by the Arnamagnean Foundation since 1730. Many members of the public, together with the academic world, were against the return of the manuscripts. But in 1961 a law was

passed to divide the Arnamagnean Collection into two, so that manuscripts and other archive material that were seen as being part of Iceland's cultural heritage were handed over to the University of Iceland for storage and administration in accordance with the foundation's charter, which was passed by King Frederik V in 1760. Although this restitution legislation was in many respects a stroke of genius, by referring to the expropriation conditions in Section 73 of the Danish Constitution more than a third of the Danish parliament, 61 members, voted to defer the enactment of the law until after the next election. The law was then passed once more on 26 May 1965. Legal proceedings brought before the Danish Supreme Court attempted to determine whether the legislation was indeed in accordance with Section 73 of the Danish Constitution. The plaintiffs lost the case and a ruling was brought in 1967. This legislation, purely a matter of *domestic politics*, authorized the Danish government to enter into agreement with Iceland about the return of the manuscripts. A treaty was made between Denmark and Iceland in 1970 to return the manuscripts over a period of 25 years, from the ratification of the treaty in 1971. Before the manuscripts could be returned, they were to be *restored* so that they could withstand the long journey to Iceland, and they were to be *photographed* and *stored on microfilm* to ensure that good reproductions were still available in Denmark for publication and research purposes, such as those mentioned in connections with the dictionary compilation. The Arnamagnean Institute was mainly responsible for the photography and the Royal Library carried out the restoration work

The Scope of the Gift to Iceland

The legislation defined which materials were to be returned. First "all *diplomas* concerning Iceland, either in the original version or in transcript, and other archive material rightly belonging to local and private Icelandic archives" were considered part of the Icelandic cultural heritage (Section 1, subsection 2). The same applied to manuscripts "if the work is known to be or can safely be assumed to be written or translated by an Icelander, and the main subjects is Iceland or Icelandic conditions, or if it is a work of Icelandic literature from the late middle ages", regardless of whether the manuscript was an original work or a transcript (Section 1, subsection 3). The same criteria were applied to the manuscripts held by the Royal Library. The law explicitly states that "in addition, the *Flatøbogen* and the *Codex Regius* of the Eddic poems (by the Elder Edda) are to be restituted" (Section 2).

A select committee of two representatives from each of the Universities of Copenhagen and Iceland was given the task of going through both institutions' manuscripts and archive collections and making recommendations as to which documents were to be returned to Iceland (Section 3-4). During the period from 1971, when the committee was set up, to 1986, a total of 11 restitution lists were drawn up and presented to the Prime Minister.

From 1971 to 1997, a total of 141 *manuscripts* were released from The Royal Library. The Arnamagnean Collection in the same period released 1,666 *manuscripts*, 76 fascicles of about 1,350 *diplomas* and 74 parcels of *apographs* with the transcripts of about 6,000 *diplomas*. About 1,366 *manuscripts*, 1,347 *diplomas* and 4,267 *apographs* remain in the keeping of the Arnamagnean Collection. The collection includes 980 Norse manuscripts, of which about 700 are Icelandic and 280 Norwegian; and 386 manuscripts of other origins: 252 Danish, 55 Latin, 32 Swedish, 25 German, 11 Spanish, 5 Italian, 4 Dutch, and 2 French. The *diploma* originals and transcripts are mainly Danish and Norwegian.

The Icelandic manuscripts remaining in Copenhagen are indeed written in Icelandic, but mainly comprise non-Icelandic material, for example, the history of the Danish and

Norwegian monarchies, religious writings, and translations from Latin and other languages. The same is the case for the Royal Library.

A Case Without Precedence in International Law

The question of the restitution of the Icelandic manuscripts and the implications for international law, not least being the issue of precedence, have often been studied and widely discussed. But this is *not* the real issue in this particular case. The question was treated as a purely *internal political matter* resulting from the dissolution of the state and later personal union between Denmark and Iceland. It is normal practice in such cases to return relevant archive material to the respective state archives. This took place after 1658 in relation to Sweden, after 1814 in relation to Norway, and after 1918 in relation to Iceland, while under other circumstances, such as when areas with *colonial status* are sold, as was the case of Denmark after 1917 in relation to the USA, or regain their independence, the situation is different. In the case of Iceland after 1944, the issue also involved the question of Iceland's cultural heritage, as some of the manuscripts were held by Danish libraries. Until the dissolution between the two countries, the Royal Library also was the *national library of Iceland*.

From a legal point of view and in terms of cultural politics, the return of the manuscripts can be seen as *a gift from Denmark* to their fellow nation Iceland. Iceland had in fact – and always recognised this before 1965 - never had any *legal claim* to the manuscripts. Denmark alone has made the decision to return the documents and, in agreement with Iceland, the collections have been divided according to the criteria described above. Iceland accepted some conditions, mainly about the storage of the manuscripts, and their availability for research and educational purposes. To this end, the University of Iceland has established a sister institution to the one in Copenhagen, called the *Stofnun Árna Magnússonar á Íslandi*. Established under the faculty of philosophy, it is housed in a specially constructed building with fulfils all the requirements of security and storage. The two countries today have a good working relationship based on mutual respect for each other's efforts. The most recent proof of this cooperation was the big Danish-Icelandic manuscript symposium held from 19-21 June 1997 in Reykjavik to celebrate the completion of the restitution project, and where all the participants were invited to the Icelandic President's state home, *Bessastadir*.

In the words of a leading modern Icelandic historian who has recorded the event: "Next to the issues of fishing boundaries around and the defence of Iceland itself the issue of the return of the manuscript the biggest and most serious problem in the foreign relations of independent Iceland. The Icelandic people realize that the Danish people have shown them such consideration as is rarely found in international circles."

But the case is a case without any legal precedence in international law whatsoever. I think this should be born in mind of all who want to make use of this case.

(25/09/2003)