

The Danish Courts – an Organisation in Development

Introduction

The Danish Courts are going through a period of structural upheaval. Currently the Danish judicial system is undergoing sweeping reforms that will change the structure and routines of the courts. Concurrently, societal developments in Denmark mean that the courts are constantly met by new demands, and the public has a legitimate expectation that the courts will discharge their duties at the highest level of professional competence, service and efficiency.

As a modern organisation, the Danish Courts have to meet these demands and expectations. This article describes how the Danish Courts discharge their duties and reviews the courts' role in Danish society, their structure, duties, values and objectives.

The Courts' role in Danish Society

The history of the Danish courts goes back several hundred years, and their duties and role reflect the sociohistorical development of Danish society. This development has gained the judiciary more independence and, by implication, the public due-process protection.

The Danish Constitution of 1849 was a giant step towards achieving an independent judiciary, because the Danish Constitution includes provisions to ensure the judiciary's organisational, functional and personal independence. In fact, section 3 of the Danish Constitution establishes the separation of powers, as designed by the French philosopher Montesquieu in his work *De l'esprit des lois* from 1748, i.e. the vesting of the legislative, executive, and judicial powers of government in separate bodies.

Since the enactment of the Danish Constitution in 1849, the judiciary has gradually assumed the responsibilities of the overall and regulatory authority of the Danish Parliament (the legislature) and the King (in practice: the government, the executive). Today the judiciary considers itself, on request, entitled to declare an act unconstitutional or overrule decisions made by government services.

Concurrently, the European Convention on Human Rights and other international conventions have given the judiciary ample room for interpretation, thereby allowing the judiciary to influence the development of the law in a way and to a degree that were unknown just a few decades ago.

The extensive powers of today's judiciary require exacting standards of independence and due process. These standards are *inter alia* provided by Article 6 of the European Convention on Human Rights, according to which everyone has a right to a fair and public trial, within a reasonable time, by an independent and impartial tribunal established by law.

In 1999, further measures were taken to ensure the organisational independence of the judiciary, i.e. the formation of the Danish Court Administration and the Danish Judicial Appointments Council.

Prior to this, there had been a long political debate on the best possible way of ensuring judicial independence of the Danish government and parliament. More specifically, it was debated whether it was appropriate for the Ministry of Justice to administer the courts and appoint judges. The debate led to the appointment of a court committee. The committee's report formed the basis of the court reform in 1999.

After a long debate in the Danish parliament and the printed press, a unanimous Danish Parliament resolved that the courts were no longer to be administered by the Ministry of Justice. Although there was no proof that the then-current system had an adverse effect on judicial independence, the Danish parliament did not want to leave room for even a theoretical possibility that such independence was not beyond question. There were to be no more ties between the judiciary and the Ministry of Justice. The Danish Court Administration and the Danish Judicial Appointments Council were established on 1 July 1999.

The formation of the Danish Court Administration was aimed at strengthening the autonomy and independence of the judiciary and demonstrating its position as the third power of government.

The formation of the Danish Judicial Appointments Council was aimed at making judicial appointments more transparent, indicating judicial independence and increasing the prospects of broader recruitment.

On formation of the Danish Court Administration and the Danish Judicial Appointments Council, the organisation that we now call the Danish Courts was established. This organisation is composed of the courts, the Appeals Permission Board, the Danish Judicial Appointments Council and the Danish Court Administration. The organisation has separate appropriations in the Budget. The board of the Danish Court Administration shall – within the given appropriations – ensure that the courts are run and developed adequately and properly.

The Danish Judicial System

From 1 January 2007, the Danish Courts are composed of the Supreme Court, the two high courts, the Copenhagen Maritime and Commercial Court, the Land Registry Court, 24 district courts, the courts of the Faroe Islands and Greenland, the Appeals Permission Board, the Special Court of Final Appeal, the Danish Judicial Appointments Council and the Danish Court Administration.

The Danish Courts exercise the judicial powers of government and resolve related issues, including probate, bankruptcy, enforcement, land registration and administrative issues.

The Supreme Court

The Supreme Court is the final court of appeal in Denmark and is situated in Copenhagen. The Supreme Court reviews judgments and orders delivered by the High Court of Eastern Denmark, the High Court of Western Denmark and the Copenhagen Maritime and Commercial Court. The Supreme Court reviews both civil and criminal cases and is the final court of appeal (third tier) in probate, bankruptcy, enforcement and land registration cases. In criminal cases, the Supreme Court does not review the question of guilt or innocence. There are no lay judges on the Supreme Court panel. Only in exceptional cases is there a right of appeal (third tier) to the Supreme Court, see below.

High courts

There are two high courts in Denmark – the High Court of Western Denmark and the High Court of Eastern Denmark. Appeals from a district court lies to the high courts. Civil and criminal cases are tried by the districts courts (first tier). In exceptional circumstances, a civil case may be referred to a high court.

The Copenhagen Maritime and Commercial Court

Since its formation in 1862, the Copenhagen Maritime and Commercial Court has heard cases concerning commercial matters. The Copenhagen Maritime and Commercial Court's competence has been extended successively, and today the court hears cases concerning maritime and commercial matters in the Greater Copenhagen area. Parties residing outside this area, including foreign parties, may make an agreement that their case is to be settled by the Copenhagen Maritime and Commercial Court. Cases under the Danish Trade Marks Act and Marketing Practices Act fall within the jurisdiction of the Copenhagen Maritime and Commercial Court irrespective of where in Denmark the parties reside. In addition, the Bankruptcy Division hears all bankruptcy, suspension of payments and debt rescheduling cases arising in Greater Copenhagen.

The Land Registry Court

The Land Registry Court was established on 1 January 2007. The Land Registry Court will handle registration of titles to land, mortgages and other charges, marriage settlements etc. The Land Registry Court's jurisdiction extends to all of Denmark.

Disputes arising from registration are settled by the Land Registry Court. There is a right of appeal to the High Court of Western Denmark. The Land Registry Court will take over registration from the district courts successively, but registration will not be totally centralised until 2008.

District courts

District courts hear civil, criminal, enforcement, probate and bankruptcy cases. Notarial acts also fall within the jurisdiction of district courts. Some district

courts will continue to handle registration in certain jurisdictional districts until such registration is taken over by the Land Registry Court, see above.

The court of the Faroe Islands

The court of the Faroe Islands is situated at Tórshavn. Its jurisdiction comprises all the islands. The court at Tórshavn hears the same cases as do district courts in other regions of Denmark. Appeal lies to the High Court of Eastern Denmark.

The courts of Greenland

The courts of Greenland are composed of the High Court of Greenland and 18 magistrates' courts. Magistrates' court decisions are made by a magistrate and two lay judges, none of whom holds a law degree. The magistrates' courts hear all civil and criminal cases. Under certain circumstances, the High Court of Greenland may take over the hearing of a case if it is found to require special legal insight or other expertise. Appeal against a decision made by a magistrates' court lies to the High Court of Greenland. Major cases are, however, brought directly before the High Court of Greenland. Appeal lies to the High Court of Eastern Denmark.

The Special Court of Final Appeal

The Special Court of Final Appeal deals with disciplinary matters concerning judges or other legal staff employed by the courts, including the courts of the Faroe Islands and Greenland, and the Appeals Permission Board. In addition, the Special Court of Final Appeal may reopen criminal cases and disqualify counsel for the defence in criminal cases.

The Special Court of Final Appeal is composed of a supreme-court judge, and high-court judge, a county-court judge, an attorney and a lawyer with scientific expertise.

The Appeals Permission Board

The Appeals Permission Board was established on 1 January 1996 and has since then considered petitions for leave to appeal in civil and criminal cases (second- and third-tier grants).

Thus the Appeals Permission Board considers petitions for leave to appeal to the Supreme Court although the cases in questions have already been tried and reviewed (third-tier grant). Such cases are test cases, e.g. cases that may have implications for rulings in other cases, or cases of special interest to the public. Certain case types require permission by the Appeals Permission Board in order to be brought before a superior court (second-tier grant).

In terms of grants and administration, the Appeals Permission Board belongs under the Danish Court Administration, but the Appeals Permission Board is otherwise independent of the judiciary and the government services. So there is no appeal from the Board's decisions to the Minister of Justice or the Parliamentary Commissioner for Civil and Military Administration in Denmark.

From 1 January 2007, the Appeals Permission Board will also act as the board of appeal for decisions on free legal aid made by the Civil Affairs Agency.

The Judicial Appointments Council

The Judicial Appointments Council, established on 1 July 1999, submits recommendations to the Minister of Justice for all judicial appointments except the post of president of the Supreme Court.

The Council may only recommend one applicant for an opening. Recommendations must be reasoned and include any differences of opinion. In practice, the Minister of Justice always follows the Council's recommendations.

The Danish Judicial Appointments Council is an independent council. The Danish Court Administration acts as secretariat to the Council, and the Minister of Justice appoints the members of the Council based on the comments of a plenary sitting of the Supreme Court, the high courts, the Association of Danish Judges, the General Council of the Danish Bar and Law Society, the National Association of Local Authorities in Denmark and the Danish Adult Education Association.

The Council is composed of a supreme-court judge (chairman), a high-court judge (vice-chairman), a district-court judge, an attorney and two representatives of the public.

The Danish Court Administration

The Danish Court Administration was established as a new independent government institution on 1 July 1999. It ensures proper and adequate administration of the courts' and the Appeals Permission Board's funds, staff, buildings and IT.

The Danish Court Administration is headed by a board of governors and a director. The Danish Court Administration belongs under the Ministry of Justice, but the Minister of Justice has no jurisdiction over it and may not change decisions made by the Danish Court Administration.

The board of governors is the chief executive and generally liable for the activities of the Danish Court Administration. The director, who is appointed and may be discharged by the board of governors, is in charge of the day-to-day management. The director is not required to hold a law degree.

The composition of the Danish Court Administration's board of governors is provided by the Danish Court Administration Act. The board of governors has 11 members, eight of whom are court representatives, one is an attorney and two have special management and social insights.

The principal points of the court reform

As mentioned above, the Danish Courts are currently undergoing a sea change. In the early summer of 2006, the Danish Parliament adopted a court reform bill.

The objectives were, among other things, to organise the judicial system so as to ensure the highest possible level of professional competence, flexibility and service as well as efficient case administration.

Below you will find an outline of the main points of the court reform, which will take effect during 2007 and 2008:

The number of district courts is reduced from 82 to 24, so that the new district courts will cover larger geographical areas and have a greater population base.

All civil cases are tried by district courts (first tier). Under exceptional circumstances, a case may, however, be referred to a high court. Hitherto certain case types must be tried by a high court (first tier).

An alternative procedure has been introduced in that civil cases may be tried by a panel of judges or by a judge assisted by experts. Formerly, multi-member courts were not an option, and assistance by expert judges was only allowed in very few case types.

More flexible rules of procedure have been introduced for civil cases (first tier). This gives the courts more scope for efficient and adequate management of the preparatory phase. A special simplified procedure for civil small-claims cases, i.e. claims of less than DKK 50,000, has also been introduced.

All criminal cases are tried by district courts (first tier). Consequently, there will be new rules on jury trial in district courts where this procedure is prescribed. Hitherto cases concerning serious offences have had to be tried by a high court (first tier), and jury trial was not possible in district courts.

Land registration will be centralised and digitalised. Hitherto each district court has had its own registry.

In conclusion, the reform will result in substantial empowerment of the district courts. The high courts will essentially act as appellate courts and thus be released from the cumbersome first-tier cases. This also ensures that the Supreme Court will alone review cases concerning essential and fundamental issues that the Appeals Permission Board has granted leave to appeal (third-tier grant).

It will be easier for the district courts to maintain a high professional level in their judicial work and to organise their procedural routines more efficiently. In addition, the courts have, in civil cases, been granted the requisite instruments to achieve more expedient management of the preparatory work.

Vision, Values and Objectives

Court work is to a large extent regulated by legislation, but the rules of law do not say how the Danish Courts should manage its day-to-day activities as an organisation and workplace or how the organisation should develop. In this context, the starting point is a shared vision and shared values and objectives. They are the result of considerations and debates that have involved a very large number of Danish Courts staff.

Vision for the Danish Courts

The Danish Courts are a highly respected and confidence-building organisation, which discharges its duties at the highest level of professional competence, service and efficiency. The Danish Courts uphold a society founded on the rule of law and is the present-day and primary forum of conflict resolution.

Values of the Danish Courts

Everyone has a right to be treated with respect.

Judicial independence is a requirement for due process.

Responsibility and credibility in all matters.

Transparency, dialogue and collaboration.

Objectives of the Danish Courts

Services:

The Danish Courts' procedures, decisions and other services meet the highest profession standards.

The Danish Courts' procedures are efficient, and they provide friendly and fast services.

The Danish Courts' are open and obliging to the public, other authorities and collaborators.

Organisation:

The Danish Courts' organisation is efficient and flexible.

The Danish Courts act as one body.

Staff:

The Danish Courts offer attractive workplaces.

Executives and staff are developed and trained according to their own and the workplace's requirements.

Results:

The Danish Courts develop and operate a smooth-running legal system with efficient resource management.

Transparency

Judiciary transparency is crucial to the public's conception of Denmark as a society founded on the rule of law and to public confidence in the judiciary.

Judiciary transparency has, in the strict sense, obvious due-process purposes, but transparency in a wider sense – meaning availability to users and the press as well as general enlightenment of the public – is imperative in modern societies.

Open justice

Both the Danish Constitution and the European Convention on Human Rights ensure open justice.

Open justice has two specific purposes. First, open justice should ensure that the relevant parties are not subjected to secret justice, which involves the risk that irrelevant considerations are given weight during adjudication. Secondly, the requirement for open justice will improve public confidence in the judicial system because the public learns how cases are adjudicated.

Open justice covers both public access to attending legal proceedings and media access to court room coverage. However, open justice sometimes has to yield to consideration for the parties or the investigation. In these situations, the court may decide to hear the case behind closed doors or impose reporting restrictions on certain details from the proceedings or the identity of the defendant.

Interaction with the media

The public will primarily learn about court proceedings via the media. And media interest in court procedures is indeed great. Knife killing, gang rape and vio-

lence are given both newspaper coverage and broadcasting time. Press coverage of legal proceedings is very important for the public conception of due process. Therefore good interaction between the media and the judiciary is essential. Under all circumstances, Denmark as a society founded on the rule of law cannot function adequately unless information about court procedures is a communicative task to be undertaken by the media in concert with the judiciary.

For this reason, in their communication policy the Danish Courts propose that the judiciary should, while observing professional secrecy, assist reporters by giving them background information, e.g. about legal practice in a given field. This may help ensure that the public is informed competently and adequately about proceedings and decisions in specific cases.

The communication policy includes some advice about interaction with the press. For it is important to us that the public and the press should, as far as possible, receive the same good treatment in all of Denmark.

Public database of judgments

An Internet database of judgments delivered by the Danish Courts would support the principle of open justice. It would give the public easy and free access to judgments and thus improve public knowledge of court procedures.

Therefore a project group appointed by the Danish Court Administration has drafted a proposal for establishment of a public database of judgments.

The project group proposes that all rulings of the Supreme Court, the high courts and the Copenhagen Maritime and Commercial Court should be published in the database of judgments. This amounts to some 6000 judgments annually. Rulings in appellate cases must be published together with the previous judgments in the relevant case.

Hopefully, the project group's efforts have produced the requisite basis for establishing a database of judgments.

Digital communication

A second element of judiciary transparency is that the courts are accessible to the public. The public's digital communication with the courts has for many years been restricted by various legislative obstacles, e.g. the *sine qua nons* of written proceedings and signatures on documents.

The legislation has now been amended to prepare the way for introduction of digital communication, and a secure and sound solution is now being developed together with a new case administration system for the courts.

In the near future, e-mail correspondence and other forms of digital communication will facilitate user contact with the courts.

Digital land registration, which will be ready from 2008, is the first step in that direction.

High-quality work

The courts should be characterised by very high standards, in all aspects of their work. Their decisions must not only be legally correct, but well formulated and include adequate reasons for the outcome.

Therefore the Danish Courts aim to maintain the highest professional standards in their case administration, decisions and other services. But how does one

measure and evaluate quality standards? What exactly should be measured? And what kind of scale should be used? What are, for instance, the distinguishing features of a fair judgment? And who should decide whether a specific judgment lives up to the ideal?

Focusing on a high standard of court procedures could help maintain the standard in times when efficiency heads the agenda. Quality assessments could document a continuous improvement in procedural standards. In the worst case, an assessment may show that increased efficiency requirements have resulted in a loss of quality. It may also show that more resources are required in order to live up to the high quality standards that should apply to the Danish Courts.

Quality assessment tests

A national user survey in 2001 was the first testing of user satisfaction with the services and quality standards found when contacting the courts. There are, however, many different methods of quality assessment.

In order to achieve a balanced assessment of the courts' results and avoid a sole focus on productivity and lead time, the Danish Court Administration appointed a task force charged with developing the guidelines for quality assessment of the courts.

In 2005, the task force published a report with a description of a pilot project on quality assessment and recommendations to the courts about further quality development. It has been decided that, based on the task force's recommendations and the experience gained, the courts shall make a targeted effort to ensure a high quality of work.

Clear and comprehensible language

The Danish Courts' language policy aims at emphasising how important it is that the Danish Courts are able to communicate in clear and comprehensible language – in unbureaucratic and everyday Danish. In other words, that the organisation is able to impart its professional quality in present-day terms.

Good service and respectful treatment

The courts exercise the judicial powers, but the courts are also a servicing body to all walks of life. So it is essential that everyone gets good service and is treated with respect when communicating with the Danish Courts.

In fact, the reason that the Danish Court Administration carried out national user surveys in 2001 and 2005 was to learn how the users found the courts' service levels and to base further improvements on user requests and requirements.

The user surveys asked the users, i.e. plaintiffs, defendants, attorneys, prosecutors etc. how they found the court services.

The user survey of 2005 showed that 91% of the users were "very satisfied" or "satisfied" with the courts in general, while 6% were neither "satisfied nor dissatisfied", and only 1% was "dissatisfied" or "very dissatisfied".

The surveys were used to concentrate our efforts on the aspects that left room for improvement. Obviously, some changes have not been feasible owing to the appropriation situation. By way of example, it is very expensive to alter a protected building to accommodate disabled persons.

Taking a close look at case administration time

In modern, democratic societies, the public should have a legitimate expectation of fast and efficient case administration at the courts. Case administration time should be as brief as possible. Not only is the quality of court decisions an extremely important factor in due-process protection, but so is case administration time. This is also embodied in the European Convention on Human Rights.

The Danish Courts are, at all times, aiming to discharge their duties at the highest level of quality, service and efficiency. But one may ask whether it is possible to provide high quality and good service without reducing efficiency – and vice versa?

The answer is that the courts should take all three aspects into account. The public has a right to expect professional and reasoned decisions from the judiciary, a kind and obliging treatment by the courts and decisions within a reasonable time.

The requirement for reduced case administration time should not lead to deterioration in court standards and thus erosion of due-process protection. Conversely, inexpedient work routines should not result in protracted case administration.

Collaborative forum

In 2006, the Danish Court Administration established a collaborative forum where representatives of the courts meet twice annually with representatives of the professional users of the courts and the public authorities who provide particulars to legal proceedings. This forum seeks to identify specific problem areas and considers proposals for improved quality, efficiency and service with special reference to case administration time.

Strong traditions and the future

The history of the Danish Courts stretches back several hundred years, which makes for proud and strong traditions.

Today many traditions are challenged by the rapid developments in Denmark and increased internationalisation. Few traditions survive unless there are rational grounds for them in the present day.

This means that, in the years ahead, the Danish Courts should continue the current development process of realising our ambitious objectives and practising our standards of value. This implies a continued appreciation of the necessity of this development as well as a dedicated management and staff, who are motivated to achieve our objectives and values.

Fortunately, we are in good train.