

The Danish Prosecution Service

1. General facts and outline history

The Kingdom of Denmark, situated in Northern Europe, consists of Denmark, the Faeroe Islands and Greenland. Denmark – but not the other two parts of the kingdom - is a member of the European Union.

The total population of Denmark in 2008 is approximately 5.5 million. Denmark is a welfare state where medical and hospital treatment is free, primary schools, secondary schools and universities are free, and everyone is entitled to an annual pension from the state upon reaching the age of 65. However, the total burden of taxation is one of the highest in the world – approximately 51% in 2006.

Denmark is one of the oldest constitutional monarchies in the world. Although Her Majesty the Queen Margrethe II is the sovereign of Denmark, the country is based on parliamentary democracy. This means that although the Queen reigns, she does not rule.

Denmark acquired its first democratic Constitution in 1849. The Constitution was most recently amended in 1953 but most of the original content of the 1849-constitution remains unchanged.

Among other things, the Constitution provides that the branches of Government are separated into three powers: The legislative power, the executive power and the judicial power.

The Danish Parliament consists of one chamber with 179 members, which holds the formal power in Denmark. At least every four years, the Prime Minister must call a general election for parliament. The executive power is exercised by the Government through its ministers. The Government thus puts the laws and decisions passed by the Parliament into practice. If the law is broken, or if there is any doubt as to its correct interpretation, the courts settle the issue.

The division of powers is an important principle of Danish democracy, since it ensures the proper balance of power among the central democratic institutions in society. Today, the Prosecution Service belongs to the executive power.

The Danish criminal procedure code (Administration of Justice Act) from 1916 with numerous later amendments regulates in detail the judiciary and the administration of justice in Denmark and also contains provisions concerning the basic features of the Prosecution Service.

The Faeroe Islands and Greenland have their own criminal codes and rules of criminal procedure, but their courts, police and prosecution services are integrated into the Danish legal system. However, the following information is related to Denmark only and not the whole kingdom.

The Danish Prosecution Service was literally created in 1919 with the coming into force of the 1916 judicial reform (the Administration of Justice Act).

Before the judicial reform, Denmark had a system of investigating judges. Moreover, the division of tasks between the investigating judge and the Police and Prosecution was unclear.

With the judicial reform it was a clear wish to form a specific unit responsible for prosecutorial decision-making and for controlling the criminal investigations and clearly separated from the judiciary. Furthermore, there was a wish to introduce oral court proceedings where the evidence was presented directly before the court.

In order to realize this objective, it was found necessary to establish a unit of persons specialised in performing prosecutorial tasks, which led to the formation of the Prosecution Service with specialised public prosecutors working independently of the judiciary. An important characteristic of the new authority was that it should be one united service with a hierarchical structure. Each level of the hierarchy is today subordinated to the higher level and can receive instructions in both general and specific matters. Moreover, the higher level supervises the lower level in the latter's execution of its prosecutorial tasks.

2. Overview of the Danish Prosecutions Service – structure and tasks

2.1. Structure of the Prosecutions Service

The Danish Prosecution Service is structured as a hierarchy of three levels headed by the Director of Public Prosecutions (the General Prosecutor). The second level comprises six units called Regional Public Prosecutors and two specialised units dealing with serious economic crime and special international crimes (The Special Prosecutor for Serious Economic Crime and The Special International Crimes Office).

At the local level, the Prosecution Service is divided into 12 districts headed by a Commissioner. The local Commissioner is at the same time the head of the local prosecution and of the local police. This type of organization is only found in a few other countries.

The Prosecution Service as well as the Police and the Prison Service are subordinate to the Minister of Justice.

Today, the Danish Prosecution Service employs approximately 600 lawyers as prosecutors. More than 50% of Danish prosecutors are women. In minor cases, specially trained police officers may also appear in court as prosecutors.

In Denmark, prosecutors are employed by the Ministry of Justice. Appointments to senior positions are formally decided by the Queen but in practice by the Ministry of Justice after recommendation from the Director of Public Prosecutions.

Although the Minister of Justice is thus directly responsible for the employment of prosecutors and of the appointment of senior prosecutors, politically motivated appointments are not known in the Danish Prosecution Service.

2.2. Tasks of the Danish Prosecution Service

The tasks and organization of the Prosecution Service are set out in the Administration of Justice Act.

The key task of the Prosecution Service is to ensure enforcement of the law in cooperation with the police and in pursuance of the rules of the Administration of Justice Act in situations where a breach of the law carries a criminal sanction.

The overall principles guiding the performance of the task are described in the Administration of Justice Act, which prescribes that the Prosecution Service shall proceed with every case at the speed permitted by the nature of the case thereby ensuring that those liable to punishment are prosecuted while the innocent are not prosecuted.

The three levels of the prosecutorial hierarchy deal with all types of criminal cases. Danish prosecutors have very limited powers/tasks outside the field of criminal cases.

The Prosecution Service has monopoly over decisions to prosecute. Thus, except for a very small number of cases such as slander, private prosecution is not known in Denmark. However, a victim can file a civil claim against an alleged perpetrator for financial damages.

The Danish Prosecution Service is not statutorily obliged to prosecute every crime brought to its attention but may to a certain extent waive prosecution or exercise prosecutorial discretion.

A decision not to prosecute is regarded as an administrative decision and must be presented in writing with written reasons. Victims and other with a direct and personal interest in the case can appeal a decision of non-prosecution to the next level of the prosecution service. Victims can also file a civil claim for financial damages.

The Director of Public Prosecutions (the General Prosecutor)

The Director of Public Prosecutions is the non-political head of the hierarchic Prosecution Service.

The Director and his staff conduct criminal cases before the Supreme Court. The Director is superior to the other levels of the Prosecution Service and may issue instructions to them, both of a general nature and with regard to specific cases.

Certain specific cases can or must be brought before the Director's office for decision-making. In providing general advice to the Ministry of Justice and commitment to international cooperation the Director also plays an important role.

The Regional Public Prosecutors

The Regional Public Prosecutors and their staff conduct jury cases before the district courts and appeal cases before the high courts. They decide if district court decisions should be appealed to the High Court and whether to prosecute or not in certain cases, particularly those concerning serious crime. Furthermore, they supervise the handling of criminal cases by the Commissioners and have full powers to instruct prosecutors. The Regional Public Prosecutors also handle cases concerning police conduct and alleged criminal behaviour by police.

Two specialised units have national jurisdiction in dealing with cases of serious economic crime and cases of special international crimes, e.g. war crimes, crimes against humanity and genocide.

The Commissioners

The legal staff of the Commissioners conducts criminal cases before the District Courts. In minor cases specially trained police officers may act as prosecutors in court. The Commissioners are responsible for the police investigation of all criminal cases and decide to prosecute or not in the vast majority of criminal cases. Due to their dual function as head of both police and prosecution, they are subject to close supervision by the Regional Public Prosecutors in relation to their tasks concerning investigation and prosecution of criminal offences.

3. Relationship with the Ministry of Justice

The Danish Prosecution Service is under the responsibility of the Ministry of Justice.

Formally speaking, the Minister is the highest-ranking prosecutor in Denmark. The Minister holds the power to give general instructions to the Prosecutions Service and also holds the legal power to interfere in specific cases, including the power to decide to initiate or discontinue prosecution.

However, it is important to note, that in practice the Minister does not exercise the power to interfere in specific cases. If the Minister should ever choose to interfere in the prosecutorial decision related to a specific case, it must be done openly, in writing and the speaker of the Parliament must be informed.

Administrative decisions taken by the Director of Public Prosecutions in the first instance can be appealed to the Ministry of Justice.

In the field of policy-making, the division of responsibility between the Ministry of Justice and the Prosecutions Service is not crystal clear.

Approximately every three years, the Government sets out general areas of priority for both the Prosecution Service and for the Police. These priorities are closely linked to the passing of the budgets for Police and Prosecution and are often passed with a broad consent in Parliament.

In the priority-plan for 2007-1010, the Prosecution Service must focus on capacity building in relations to human resources and on the sharing of knowledge; on enhanced efficiency through deliberate setting of objectives, management and personnel management; and on ensuring legality.

Beside these general priorities, the Director of Public Prosecutions every year publishes his priorities for the Prosecutions Service as such. For 2008, the Director of Public Prosecutions has decided that for example the following topics must be areas of priority: Capacity building of personnel in order to enhance the quality of prosecutorial work; faster handling of cases concerning psychical assault; faster handling of cases concerning complaints over the Police; confiscation of assets; cases concerning financial compensation to citizens; enhancement of ensuring of legality with a special focus on legality of house searches; and ensuring the rights of children under the age of 15 during deprivation of liberty. (The list is not exhaustive).

4. Relationship with the Police

Denmark has one, unified police force with approximately 11.000 police officers.

The Danish Police is divided into 12 local police districts. The Police districts are subordinated to the National Commissioner of Police that carries out a number of administrative tasks in operating the Police.

The duties of the Police are to maintain security, peace and order; to ensure that laws and regulations are complied with; to take the necessary steps to prevent crime and to investigate crime.

Police officers at the local level investigate criminal offences. If the case is complicated, the investigation will be carried out by investigators specialised in certain areas of crime, such as for example economic crime, murder, organised crime, major drugs crime and IT-related offences.

As mentioned above, at the local level the Police and the Prosecution Service are headed by the same Commissioner. Only very few other countries share this structure.

Due to this structure, the Danish prosecutor has a close day-to-day cooperation with the investigating police authorities. Often, investigations will be carried out under the advice of the prosecutor. At the same time, it is the task of the prosecutor to ensure that during criminal investigations, the Police observe all statutory rules and procedure. It is thus the responsibility of the prosecutor to ensure and control the legality of the investigations carried out by the Police.

The Danish system is based on the principle that the courts must approve all intrusive investigative measures such as for example pre-trial detention, interception of telecommunications, search and seizure. In cases where the Police wish to perform such investigative steps, the prosecutor must therefore approve of the step and bring the question before the courts in order to obtain the approval of the court.

5. Relationship with the Judiciary

5.1. Independence of the Judiciary

With the Danish Constitution of 1849 the separation of the legislative, the executive and the judicial powers was introduced. Thus, the Constitution of 1849 was a crucial step towards achieving an independent judiciary. This separation was essential to the establishment of an independent judicial review with the work of the Police and Prosecution.

In 1999, another important step was taken to ensure the independence of the Judiciary, namely the formation of the Danish Court Administration and the Danish Judicial Appointments Council. Before that, the courts were administered and judges appointed by the Ministry of Justice.

The formation of the Danish Court Administration was aimed at strengthening the autonomy and independence of the Judiciary and demonstrating a 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.

5.2. Structure of the Judiciary

The main structure of the Danish Judiciary consists of a three level hierarchy: The Supreme Court, two High Courts (courts of appeal) and 24 District Courts. These courts deal with civil, administrative and criminal cases.

The Danish Court Administration ensures that the courts are run and developed adequately and properly.

As a main rule, all criminal cases are – in the first instance - dealt with by one of the 24 District Courts. The most serious cases are conducted as jury cases.

Decisions by the District Court can – with a few minor exceptions – be appealed to one of the two High Courts.

The decisions of the High Courts can only be appealed to the Supreme Court with a special permission given by the Appeals Permission Board.

The Danish system is based on the principle that all intrusive measures such as pre-trial detention, telephone tapping, performing of searches must be approved by the court. The courts are therefore often involved in criminal cases already at the investigative stage.

Appendix I

The basic structure of the Prosecution Service and the Police

