

Report from Denmark

presented by

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1. Administrative General Regulations and Concrete Decisions

(a) Like the constitutions of many other European countries, the Danish Constitution is founded on the doctrine of separation of powers: the legislative, the executive (or administrative), and the judiciary.

The activities of Danish public administration are subject to a legality principle under which regulations and decisions of the administration are not allowed to violate the Danish Constitution and statutes passed by the Danish Parliament, nor are they allowed to interfere in the sphere of private citizens' activities, except where specifically authorized by law.

Danish statutes in many fields authorize the Minister concerned to lay down detailed administrative regulations governing a particular field. In some cases, authority to lay down general regulations is delegated to local government authorities, typically town or district councils.

The scope of judicial review of such general regulations laid down by local authorities and aimed at private citizens is the subject of this present Report.

(b) The regulations issued by the Administration by virtue of statutory provisions are characterized by aiming at an unspecified plurality of persons and being applicable to an indeterminate number of cases. They usually take the form of an Executive Order and must be published to be binding. If laid down by the Minister concerned, the administrative regulations will usually be published in *Lovtidende* (the Danish Law Gazette), in which statutes generally are published.

In Danish law, the administrative decision differs from the general administrative regulation in that the contents of the former are concrete and serve to determine what is or shall be the correct legal position in an actual situation.

2. Availability of Judicial Review

The courts of law are centrally placed in Danish public law. In all criminal cases where violation of public law statutes is prosecuted, the courts give the final interpretation of the statutory provisions in question. And normally it will be the courts that give the final interpretation where sanctions other than a custodial sentence are applicable for acts or omissions contrary to public law statutes or to general regulations authorized by statute, such as compulsory fines or immediate enforcement of a decision not voluntarily complied with by the party concerned.

Under the provisions of the Danish Constitution Act, the courts are expressly and directly authorized to review administrative regulations and decisions, cf. Section 63 of the Danish Constitution Act, which reads as follows:

«63.- (1) The courts of law may determine any question relating to the limitation of powers of the Administration. However, no person desiring to raise such a question shall, by bringing the matter before the courts, be excused from tem-

porarily complying with the decision made by the Administration.

(2) The hearing of matters relating to the limitation of powers of the Administration may by Act of Parliament be transferred to one or more courts of administrative law from which appeal shall lie to the Supreme Court of Denmark. More detailed rules in this respect shall be laid down by Act of Parliament».

The Danish Parliament has passed no special rule on courts of administrative law as provided for by s. 63 (2) of the Danish Constitution Act. Review of the scope of administrative power is the province of the ordinary courts of law, cf. illustration of the Danish Judicial System in the Table attached hereto.

In court practice, judicial review of administrative acts takes in both general regulations and concrete decisions made by the Administration.

As already mentioned, general administrative regulations are subject to judicial review in a variety of circumstances.

It may be in civil or in criminal matters that the courts will be called upon to give their opinion prejudicially. And it may be matters dealt with by the sheriff and also instances of administrative detention. Less typically, the courts may review cases relating to estates of deceased persons, to judicial registration of land, etc.

Examples of civil cases are actions for a declaration or for the levying of execution. Typically, the action will be brought by a private citizen, but it does happen that it is brought by the Administration. Where the matter is brought by a private citizen, the claim will typically be for the administrative regulation or decision to be declared null and void, but judicial review may come into play also where the claim is for damages.

Danish law does not grant a general right of action — an *actio popularis* — to private citizens who find a particular administrative regulation to be illegal or inappropriate. A private citizen may bring an action only if he has a material and individual interest in the outcome of the action.

If, on the basis of a general administrative regulation authorized by statute, the Administration has issued a concrete restrictive or mandatory injunction, or a rejection, the addressee of such injunction etc. will be entitled to go to court, even if the injunction etc. simply represents a correct application of the standard rule; by this means the addressee may at the hearing cause the general regulation to be reviewed. The courts may also admit for hearing a case where the alleged illegal administrative regulation — without intervening administrative decision or actual action — is claimed to adversely affect the citizen's concrete direct or indirect interests, for instance if an Executive Order demands from various traders information on production or total sales or restricts their modes of advertising. Each trader may then request a court judgment to the effect that he does not have to comply with that Executive Order. But a claim demanding the Order to be declared null and void would not be actionable, cf. Head 3 infra.

3. Cases illustrating Judicial Review

In connection with administrative regulations it is less apt to talk of the private party as the addressee of the administrative regulation. In a court action where the validity of the regulation is considered, the court will pronounce only in respect of the matter before it, that is to say: any invalidity found will be expressed by the court holding the regulation to be not binding solely on the private party who has brought the action. The judgment will have legal force only between the parties to the action, but the consequence of its effect as a leading case will in practice be that the particular regulatory provision found lacking in statutory authority will be taken to have been generally set aside.

The following examples of judicial review of administrative regulations are cited from court practice:

(a) In its judgment of 8 October 1962, the Supreme Court held that the Unemployment Relief Projects Act provided adequate authority for the Minister of Labour to issue general administrative rules on discontinuation of certain projects already in progress. No basis was found for a works contractor's claim for damages to recover loss suffered during temporary stoppage of a relief project. The judgment is reported in *Ugeskrift for Retsvasen (UfR)*, (the Danish Law Weekly) 1962 p. 826. The facts of the case were as follows:

An independent contractor had contracted with a town council for performance of road work that for unemployment relief reasons was government subsidized. As a consequence of a demand made by the Minister of Labour, work was stopped for a certain period. In a later court action, the contractor claimed damages for consequential loss. In support of his claim he argued (*inter alia*) that the Minister had not had adequate authority to issue the general administrative regulation under which stoppage of the work had been ordered.

On this point, the majority of Supreme Court Judges commented (*inter alia*) as follows:

«According to the Rigsdag (Parliament) debate in 1946 on the Unemployment Relief Projects Bill, Parliament undoubtedly found that the Bill and the related, earlier Acts provided authority (as had been the case several times and latest during the parliamentary debates on that question — and when regard was had to necessary execution of other projects) for the issue of regulations ordering stoppage of government subsidized projects like the one at issue in this present matter, also after the start of such projects».

Regardless of the fact that, according to its tenor, the Act authorizing issue of regulations did not address itself to works already started, the Supreme Court subsequently, and also because this interpretation agreed best with the purpose of the Act, endorsed that the Act had provided adequate authority for stoppage to be ordered pursuant to the administrative regulation, also in the case of works already begun.

Therefore, as adequate authority was found for the Ministry of Labour Order, there was against this background no basis for awarding the contractor consequential damages on the ground of the stoppage.

(b) In its judgment of 3 December 1973, the Supreme Court held that the Ministry of the Arts had no authority to grant a sector of the Library Service exemption from the general rules on copyright. The judgment is reported in UfR 1973, p. 75. The facts of the case were as follows:

"Bibliotekscentralen", a non-profit, independent institution whose objects are to assist Danish lending libraries in their bibliographical and library - technical duties, including publishing and book-binding activities and supplying of office furniture and equipment, asked the Minister of the Arts to be put on an equal footing with archives, lending libraries, and museums in respect of copyright, so that "Bibliotekscentralen" could offer public libraries subscriptions to photocopies of daily papers' literary reviews, to be used by the libraries when deciding what newly published books to buy.

In reply, the Minister of the Arts said (inter alia) as follows:

«This Ministry, in agreement with the statement made by the Copyright Board, finds that it must be doubtful if s. 12 of the Copyright Act and the Executive Order of 21 July 1982 provide adequate authority for the establishing of a library subscription scheme under which "Bibliotekscentralen" may offer all libraries subscriptions to deliveries of photocopies of daily papers' literary reviews for use as a guide to the libraries' purchases of books».

The Minister of the Arts did not find, however, that the contemplated subscription scheme would be in violation of the copyright held by reporters and journalists.

In an action brought by Dansk Journalistforbund (Reporters Association) against the Ministry of the Arts, the Reporters claimed that the Ministry be ordered to admit that under the Copyright Act the Ministry had not been entitled to grant "Bibliotekscentralen" permission to deliver (without permission given by and fee paid to the author) a photocopy of each literary review brought in daily papers to each of the libraries that subscribed to the papers of whose literary reviews they receive photocopies from "Bibliotekscentralen".

The majority of Supreme Court Judges held that neither the Copyright Act nor the Executive Order issued by virtue of that Act authorized the granting of permission to offer a subscription scheme as referred to.

Hoyrup, S.C.J., in his commentary on the judgment (UfR 1973 B/165) points out that the majority decision implies that the Executive Order would have to be amended, at least if implementation of the contemplated scheme should be feasible under the copyright rules, but that it would, however, seem doubtful if such amendment of the Executive Order would find adequate authority in s. 12 of the Copyright Act.

(c) In its judgment of 18 January 1976, the Supreme Court held that in an Act on broadcasting activities adequate authority was found for an administrative regulation providing that officers of the General Post Office shall have access to the equipment for inspection and repairs. The regulation was not counter to the provision of the Constitution Act requiring a court warrant as basis for search of houses. The judgment is reported in UfR 1976, p. 184 H. The facts of the case were as follows:

The provisions of s. 1, cf. s. 7, of the Radio Communications Act prohibited, as did the corresponding provisions of the earlier enactments, the installation and operation of equipment of every description for radio communication, save where licence was granted by the Minister of Public Works. Under s. 3 of the Act, the Minister is authorized, as he was under the earlier enactments, to lay down detailed requirements for the granting of licences and for the fitting-up and use of licensed radio equipment.

Among the administrative regulations issued by the Minister pursuant to the Act was s. 11 of Executive Order No 200 of 14 June 1965, which provides that inspection shall be allowed at any time at the houses of owners of approved radio equipment. It was further provided that employees of the General Post Office were to have free and unimpeded access to the radio equipment at any time, subject to production of proof of identity. Anyone who denied GPO representatives access to their premises for the purpose of checking as provided for by the Order would, under s. 13 of the Order, be liable to a fine.

The owner of a type-approved set of radio equipment denied representatives of the GPO access to his house and was consequently prosecuted for violating the administrative regulations on checking of radio equipment. The prosecution claimed imposition of a fine.

Pleading "not guilty" the owner of the radio equipment claimed (i) that s. 11 of the Executive Order had no adequate authority in the Radio Communications Act, and (ii) that s. 11 actually provided for search of a house and therefore was counter to s. 72 of the Constitution Act on the inviolability of private premises.

A majority of the Supreme Court Judges gave their opinion on this matter (inter alia) as follows:-

«Use of the equipment by the accused is conditional upon compliance with specified requirements, including the provision of s. 11 of the Executive Order on access for inspection at any time, and according to the evidence the accused had been apprised of that provision. S. 11 of the Executive Order and the related penalty provision in s. 13 are found to be adequately authorized... (by the Radio Communications Act). Issue of such provisions for the checking of compliance with statutory requirements is found to fall within the powers conferred upon the Minister by the Act. The Act may reasonably... be assumed not to authorize search of a house without a court warrant, but even if the provision of s. 72 of the Constitution Act is taken to comprise the kind of inspection here treated of, we do not find that provision to be a bar neither to statute - authori-

zed issue of rules on access for inspection and examination of equipment in cases like the present one, nor to issue of rules authorizing imposition of fines — with the consequent possibility of trial in court — for denial of such access».

On these grounds the accused was held liable to a small fine.

(d) In its judgment of 16 June 1977, the Western High Court acquitted four persons of violation of a provision of the local byelaw prohibiting distribution of pamphlets in the immediate neighbourhood of schools and barracks. The provision was held to be not adequately authorized by the Police Act. The judgment is reported in UfR 1977, p. 872. The facts of the case were as follows:

Four members of the youth organisation of a political party had near military barracks distributed an antimilitarist pamphlet in which future conscripts were (inter alia) urged to refuse to do military service.

The charge was for violation of s. 12 (3) of the local byelaw, which read as follows:

«Within a distance of 100 metres from entrances to schools, pamphlets must not be distributed on school days; nor must pamphlets be handed out within 100 metres of entrances to military barracks».

Byelaws are issued by local authorities pursuant to the Police (Outside Copenhagen) Act. 1891.

The Western High Court made known (inter alia) that:- «No ground is found for assuming that distribution of pamphlets in streets within the distance from entrances to barracks given in the byelaw would cause any risk of disturbance of local order more serious than that caused by distribution of pamphlets in other heavily trafficked public places where no regulatory prohibition exists against distribution of pamphlets. Moreover, should any such distribution cause disturbance or a risk of disturbance, the police may intervene by virtue of other provisions of the local byelaw. Weighed against the desirability of not unnecessarily constraining the right to dissemination of opinions, the court therefore doubts the advisability of finding the provision in the last clause of s. 12 (3) to be necessary for the maintenance of public order».

As the basis for the provision was thus not found to be so certain as must be required for imposition of criminal liability in case of violation of the provision, the four youths were found not guilty.

(e) In its judgment of 11 October 1978, the Western High Court acquitted a person of violating various administrative regulations on home slaughtering, as the regulations were not adequately authorized by the Meat Act. The judgment is reported in UfR 1978, p. 188. The facts of the case were as follows:

A person had sold goats and sheep to various foreigners whose religious persuasion prescribed a special rite to be observed at slaughtering and had

permitted the buyers to slaughter the animals at premises leased by him.

The Ministry of Agriculture had in an Executive Order laid down regulations to the effect (inter alia) that private persons' right to slaughtering for own consumption was limited, and that such slaughtering was allowed only at their private residences. According to its tenor, the Executive Order was issued pursuant to the Meat Act, which empowered the Minister of Agriculture to lay down more detailed provisions on emergency slaughtering.

The Western High Court did not find the authority provided by the Meat Act limiting the right to slaughter for own consumption adequate for allowing slaughter only at the private residences of consumers. Therefore, and as no ground was found for assuming that the foreigners concerned had slaughtered on behalf of others or with intent to resell the meat, the accused was found not criminally liable for being a party to the violation of the prohibition.

(f) In its judgment of 9 May 1985, the Supreme Court held certain landowners not liable to contribute towards the operation of a waste water plant before their lands were linked up with the waste water system. The empowering Act was found not to provide adequate authority for the issue of administrative regulations requiring such contributions. The judgment is reported in UfR 1985, p. 570. The facts of the case were as follows:.

Owners of certain private lands had been ordered, pursuant to a byelaw drafted by the local district council and approved by a central government authority and concerning (inter alia) payment for waste water discharge, to contribute towards operation of the system also during an initial period when their lands had not yet been linked up with the waste water system. Actually, one property could not be linked up at all. The landowners went to court, challenging the local council's decision to collect contributions for waste water discharge and claiming (inter alia) that the local council be ordered to accept that it had no right to collect operation contributions as long as the landowners properties were not linked up with the waste water system.

The Supreme Court held that s. 78 (1) of the Watercourse Act did not authorize levying of such operation contributions from owners of land not linked up with the system.

Even while the matter was pending before the courts the local council had begun collecting the contributions. Therefore, upon a claim made by the landowners, the Supreme Court ordered the local council to repay the already received contributions plus interest at the ordinary litigation interest rate computed from the dates of receipt of contributions until repayment was made.

4. Scope of the Judicial Review

(a) When deciding whether administrative regulations are based on adequate

authority, the courts will (inter alia) have to consider if the rules are in conformity with the Danish Constitution and with the Acts passed by Folketinget (Parliament).

The judgments reported in UfR 1976/184 H and UfR 1977/872 V (see Head 3, (c) and (d) supra) serve to illustrate how review by the courts comprises not only the conformity of administrative regulations with such Acts as in the Administration's opinion provide the required authority but also their conformity with the Constitution Act.

(b) Under European Community law certain rules contained in the EC treaties and in EC regulations are directly applicable in each of the Member States of the Community.

These EC rules and regulations may thus be relied on in the national courts by individual citizens. Where doubt arises as to whether a later provision of a national Act or of a regulation issued pursuant to a national Act is in conflict with a directly applicable EC rule, the national courts will have to decide whether to apply national law or EC law. They must decide which of the two bodies of law shall have priority. The question of priority will present itself to the national judge only when on the one hand there is a directly applicable EC rule and on the other a later national Act. An earlier national Act or a lowerranking rule of law, for instance an Executive Order, will without more be set aside by virtue of general principles of interpretation (*lex posterior* or *lex superior*), without the national judge having to consider whether the EC law takes precedence.

Where a Danish administrative regulation is inconsistent with a directly applicable EC rule, the Danish courts will have to apply the directly applicable EC rule.

(c) The Danish Constitution contains no express provision with regard to the effect of a validly concluded treaty on domestic law. The legal principles governing this question are, however, quite clear.

Under Danish law provisions of a treaty, Which are binding upon Denmark, are, generally speaking, not directly enforceable by Danish courts of law or by Danish administrative authorities. In case a provision of a treaty lays down a rule which is inconsistent with an epxress provision of a domestic statute or other rule of law the domestic rule prevails, and that rule, not the treaty provision, must be applied by Danish law enforcing authorities. Neither can a provision of a treaty serve as legal authority for those acts of Danish authorities, which under domestic law may be carried out only when authorized by law. Consequently any provision of an international treaty in order to be enforceable by Danish courts or administrative authorities has to be transformed into an internal law or an administrative regulation.

The traditional method in Denmark for transforming treaties is to reformulate the treaty, or rather the part of it that needs implementation, in a statute or administrative regulation. But a treaty may also be adopted or incorporated into Danish law by statute or administrative regulation. In the latter case the text of the treaty is directly applicable in Danish law, but only to the extent specified in the domestic legal instrument concerned.

Of course, the contracting of an international obligation does not always make it necessary to pass a statute or other domestic rule of law, transforming the pertinent provision of the treaty into internal law. This becomes necessary only to the extent that the provisions of a treaty do not conform to a pre-existing legal situation.

The practice generally followed by Denmark does, however, raise a question as to what the legal situation is, if these corresponding rules give rise to doubts as to their proper interpretation, or if they are amended in a way which is in conflict with the underlying international obligation.

On this point a principle generally recognized in domestic legal systems comes into play, i.e.: that in the event of ambiguity the domestic rules should be interpreted in accordance with the State's international obligations.

This rule is also recognized in Danish law, but its contents and scope under Danish law have been greatly clarified during the debate on the constitutional problems related to Denmark's accession to the European Communities. During this debate the Danish Ministry of Justice prepared a memorandum regarding these problems, which was submitted to Parliament in the summer of 1972. The first part of this memorandum contains a survey of Danish law on the implementation of treaties.

In this survey reference is made to recent Danish legal literature, where it is maintained that the law-enforcing authorities, when in doubt about the interpretation of a legal provision, should prefer the interpretation that will best comply with existing treaty obligations. This is known as the rule of interpretation.

In these writings it is further maintained that in the absence of any special indications to the contrary a conflict between a treaty provision that has previously been observed in Denmark, and a provision in legislation enacted later, should be solved by applying the new provision in a manner that will respect the treaty provision, even if the tenor of the new provision is clearly at variance with the treaty. This is known as the rule of presumption: The courts should "presume" that it has not been the intention of Parliament to pass legislation contrary to Denmark's international obligations. These views are fully upheld in the memorandum from the Ministry of Justice, where the conclusion of the survey on this point reads as follows:

«...In the Ministry's view, Danish law courts would in all probability prefer a more ad hoc application of a law to a literal interpretation if the latter would make the State of Denmark responsible under international law for an unintentional violation of a treaty».

This extensive formulation of the rule of interpretation was not only accepted by the Danish Government when evaluating the questions of constitutional law raised in regard to the Danish entry into the European Communities.

In the present context one aspect of the widening of the rule of interpretation is particularly worth noting, i.e. its consequences for the exercise of discretionary powers by administrative authorities. On this point the memorandum from the Ministry of Justice states that administrative authorities should exercise discretionary powers

in such a way that the administrative acts — be it decisions or general regulations — conform to validly contracted international obligations. This should be regarded as a legal obligation enforceable by judicial review under Article 63 of the Danish Constitution.

5. The Legal Effects of Judicial Review

(a) As mentioned under Head 2 (*supra*), judicial review may be exercised in a variety of legal matters (criminal cases, ordinary civil actions, matters for the sheriff, etc.). The legal effects of judicial review will therefore to a great extent depend on the circumstances under which the review is exercised.

If, in a criminal case concerning violation of an administrative regulation, the court finds the regulation to be null and void, for instance because of lack of underlying authority, the legal effect will be acquittal of the person or persons charged, cf. UfR 1977/872 V (referred to in Head 3 (d) *supra*).

Where the sheriff has been involved in collection of an excise duty or other public levy and the sheriff's court finds that the administrative regulation imposing the levy is invalid, the legal effect will be refusal to proceed with the matter, which again means that levy cannot be executed.

In a civil action, a citizen may claim a declaration from the public authority concerned to the effect that it was not entitled to make the administrative decision in question. The ground for such claim may be that the particular administrative decision was made pursuant to an invalid administrative regulation. Where the court finds this to be the case, the authority concerned will be ordered to acknowledge that it was not empowered to make the decision in question, of UfR 1973/75 H (referred to in Head 3 (b) *supra*). Consequently, the decision will not bind the citizen concerned. If the decision has had legal effect, if for instance payments under the decision have been made to the authority concerned, repayment of such moneys may be claimed, of UfR 1985/570 H (referred to in Head 3 (f) *supra*). Moreover, if the administrative decision has caused the citizen to suffer a financial loss, he will normally be entitled to claim damages.

In a court action where the validity of an administrative regulation comes up for decision, the courts will thus decide only in respect of the matter at issue, that is to say, any invalidity found will make itself felt only in that the regulation will be deemed to be not binding on the private party who has brought the action. As mentioned under Head 3 (*supra*), the judgment has legal force only between the parties to the action, but the consequence of its effect as a leading case will in practice be that the particular regulatory provision found lacking in statutory authority will be taken to have been generally set aside.

(b) As will be seen from the examples set out in Head 3 (*supra*), the legal effects of court judgments will normally have retroactive force in the sense that the particular administrative decision quashed is denied legal effect. Any legal effect caused

in the period until judgment is given will, to the extent possible, lapse.

(c) It may happen that the courts set aside an administrative decision in a particular matter within a field where the administration has already made a number of identical decisions. If the altered administrative practice consequent upon the court judgment is solely of advantage to the citizens, it will follow from general administrative practice that as far as possible the authority concerned will have to find the addressees of the decisions already made and to issue to each of them a new decision. In cases where the authority may have difficulty in finding the addressees of a "wrong" decision, the administrative practice is to solve the problem by notices inserted in the daily papers.

THE DANISH JUDICIAL SYSTEM

I. INFORMATION ON THE DIFFERENT COURTS

A. DISTRICT COURTS (Byrettor)

1. Competence of the court

(a) The vast majority of *civil cases* are brought before the District Courts as courts of first instance. The powers of the District Court include — besides the actual administration of justice — the functions of bailiff («foged») estate administrator (akifteforvaller) and notary («notar»), together with responsibility for certain records and registrations, particularly in regard to real estate («tinglysningsvaesenet»).

(b) Only a very few categories of *criminal cases* are tried before one of the High Courts as courts of first instance, see below, B. 1 (b). All other criminal cases are brought before the District Court.

2. Composition of the court

(a) Denmark is divided into 64 court districts. In comparison the total number of local government areas («boroughs») is 277. Thus most court districts cover more than one «borough».

Most District Courts have only one professional judge, but in some larger District Courts there are two or three professional judges. In Copenhagen the District Court is known as the Copenhagen City Court, which is made up of a Chief Justice and 30 other judges. A similar organisation is found in Aarhus (a Chief Justice and 11 other judges), Odense (a Chief Justice and 8 other judges) and Aalborg (a Chief Justice and 7 other judges). Finally the District Court in Randers is made up of 4 judges.

Regardless of the number of judges appointed to a particular District Court, only one professional judge tries each case. Thus District Courts with more than one judge are divided into an equal number of chambers.

(b) *Civil cases* are as a general rule heard by the professional judge with no lay judges taking part in the proceedings.

Civil cases (and criminal cases) in which special knowledge of maritime affairs is regarded as essential are heard by the District Court supplemented by two assessors. In commercial cases the District Court may rule that the Court be supplemented by two assessors. The assessors are chosen from a list of maritime and commercial assessors appointed by the Chief Justice of the competent High Court after consultation with the appropriate organisations. (In the Greater Copenhagen area these cases are heard by the Maritime and Commercial Court. This court may also hear cases from court districts outside the Greater Copenhagen area if the parties agree (see below, C).

All suits dealing with renting of houses or other accommodation covered by the Lease Act are heard by the Rent Tribunals as courts of first instance. These tribunals are made up of the District Court judge and two assessors appointed by the judge from two lists drawn up by the Chief Justice of the High Court after consultation with the major associations of real estate owners on the one hand and the tenants associations and business organisations in the district on the other.

(c) When trying *criminal cases* the District Court is composed of the district Court Judge and two lay judges, except in cases where the accused has pleaded guilty, and in minor cases where the prosecution is instituted by the Chief of Police, when no lay judges take part. However, in cases where the accused has pleaded guilty, lay judges do sit if special sanctions are claimed, such as preventive detention in an institution for psychopathic criminals, and the like.

3. Legal remedies

Appeals from judgments rendered by the District Court, whether in civil or criminal cases, lie to the competent High Court. This is also the case in regard to the local Maritime Courts and Commercial Courts and in regard to the Rent Tribunals.

B. HIGH COURTS (Landsretter)

1. Competence of the court

(a) The High Courts are courts of *appeal* in regard to judgments rendered by the District Courts, see above, A. 3.

(b) The High Courts are also courts of *first instance* in more important *civil cases* (e.g. suits where the amount in dispute exceeds 200.000 D. Kr. and most actions for declaratory judgments against administrative agencies), and in those *criminal cases* which under Danish law are tried by jury.

2. Composition of the court

(a) There are two High Courts, the High Court for the Eastern Region («Ostre Landsret»), having jurisdiction in the counties of the islands and located in Copenhagen, and the High Court for the Western Region («Vestre Landsret»), having jurisdiction in the counties of Jutland and located at Viborg. «Ostre Landsret» is made up of a Chief Justice and 42 other judges; Vestre Landsret, is made up of a Chief Justice and 19 other judges. Each of the High Courts is divided into a number of chambers consisting of three judges.

(b) *Civil cases* are as a general rule heard by three professional judges with no lay judges taking part in the proceedings, regardless of whether the case is brought before the High Court on appeal or as a court of first instance.

Certain decisions made by the Tribunal of Appeal in Social Affairs, e.g. decisions on removal of children from their home, may be brought before the High Court. In the hearing of these cases, the High Court is composed of three judges and three assessors, one being an expert in child welfare and the other two in children's psychiatry or psychology. The assessors are chosen from a list drawn up by the Minister of Justice after consultation with the Minister of Social Affairs.

When maritime cases are brought before the High Court, two assessors shall participate in the proceedings; In commercial cases the court may so rule. The assessors are chosen from a list drawn up by the Chief Justice of the High Court after consultation with the appropriate organisations.

(c) *Criminal cases* brought before the High Court as a court of *first instance* are tried by three judges and a jury of twelve.

Criminal cases brought before the High Court on *appeal* are tried by three professional judges and three lay judges, except in cases prosecuted by the police, when no lay judges sit.

3. Legal remedies

(a) Appeals from judgments in *civil cases* heard by the High Court as a *court of first instance* lie to the Supreme Court. As regards judgments in cases heard *on appeal*, a further appeal to the Supreme Court is possible only under exceptional circumstances by special permission of the Minister of Justice.

(b) Appeal against judgments in criminal cases heard by the High Court as a court of first instance lie to the Supreme Court except as regards questions of evaluation of evidence. In cases heard by the High Court on appeal, this remedy lies only in exceptional cases by permission of the Minister of Justice.

C. MARITIME AND COMMERCIAL COURT (So-og Handelsretten)

1. Competence of the court

The court has jurisdiction in civil cases (and criminal cases) from the Greater Copenhagen area in which special knowledge of maritime and commercial affairs is regarded as essential. In cases of this kind outside the Greater Copenhagen area the parties may agree that the case be brought before the Maritime and Commercial Court (of Copenhagen).

2. Composition of the court

The court is made up of a Chief Justice and a Deputy Chief Justice, both being graduates in law, and a number of assessors in commercial and maritime affairs, appointed by the Chief Justice after consultation with the appropriate organisations.

Cases are heard by chambers composed of the Chief Justice or the Deputy Chief Justice and two to four experts.

3. Legal remedies

Appeals from judgments rendered by the Maritime and Commercial Court (of Copenhagen) lie to the Supreme Court.

D. THE SUPREME COURT (Højesteret)

1. Competence of the Court

The Supreme Court has jurisdiction only as a court of appeal in regard to judgments passed by the High Courts, the Maritime and Commercial Court (of Copenhagen) and the Special Court of Revision (when exercising disciplinary authority over judges see below, E).

2. Composition of the court

The Supreme Court is made up of a Chief Justice and fourteen other judges.

At least five judges must sit in a case. The court usually sits in two chambers each comprising at least five judges. In cases involving issues of major importance, however, more than five judges usually sit; and in outstandingly important cases the court sits as a full court.

There are no cases where lay judges take part in the proceedings.

3. Legal remedice

There is no appeal from the Supreme Court. Petitions for re-opening of criminal cases decided by the Supreme Court on appeal may, however, be brought before the Special Court of Revision, see below, E.

E. THE SPECIAL COURT of revision (Den Særlige Klugeret)

1. Competence of the court

(a) The court has jurisdiction as a *disciplinary body in regard to judges*. Cases are brought before the court by the Director of Public Prosecution on complaints from private citizens or the Minister of Justice. Orders of impeachment and suspension may be issued only by this court.

(b) The court has also jurisdiction to the *petitions for the re-opening of criminal cases*, e.g. when new evidence has been found in favour of the sentenced.

2. Composition of the court

When exercising its disciplinary powers the court is composed of one Supreme Court judge, one High Court judge, and one District Court judge. When hearing petitions for the re-opening of criminal cases the court consists of the above-mentioned three members and, in addition, a practising lawyer and a professor of law.

Members of the court are appointed for ten years at a time.

3. Legal remedies

The courts' exercise of *disciplinary powers* is subject to appeal to the Supreme Court.

II. INFORMATION ON THE OFFICE OF THE ATTORNEY OF STATE

The Public Prosecution («Anklagemyndigheden») comes under the Ministry of Justice.

The supreme prosecuting authority for the country as a whole is the *Director of Public Prosecution* («rigsadvokaten») who—except for the powers of the Minister of Justice which are rarely applied—has the final decision as to whether proceedings should be instituted. In addition, he pleads, assisted by an assisting prosecutor, on behalf of the public, all criminal cases brought before the Supreme Court.

In most criminal cases the decision to prosecute is made in actual practice, by one of the seven *District Attorneys* («Statsadvokater»), who come under the Director of Public Prosecution (and the Minister of Justice). The District Attorneys also plead the cases on behalf of the public either in person or through a number of full-time and part-time assistants (practising lawyers and civil servants).

The preliminary inquiry is carried out under the authority of one of the 54 local Chiefs of Police («Politimester»). The court takes no active part in this inquiry. The Chiefs of Police, who are State officials, are also responsible for initiating proceedings in certain minor—though numerous—cases, the greater part of which are cases relating to offences liable to be punished by penalties no higher than those of a fine or simple detention. These so-called police cases include most traffic offences. Incidentally, these cases are often settled out of court by the accused person agreeing to pay a fine, which is fixed by the Chief of Police.

Besides being subordinate prosecuting authorities the Chiefs of Police discharge a number of administrative functions as local representatives of the central government authorities. The Chiefs of Police are each assisted by one or more deputies.

Criminal cases against military personnel for violation of the Military Penal Code are handled by a special *Military Prosecution*, which comes under the Ministry of Defence. These cases, too, are however, tried by the ordinary courts.

III. STATISTICAL DATA

A. NUMBER OF COURTS

There is one Supreme Court and 2 High Courts. The number of District Courts is, as of 1 April 1981, 84.

B. NUMBER OF CASES AND OF JUDICIAL DECISIONS

1. Civil cases

In 1979 226.410 civil cases were brought before the District Courts, and judgment delivered in 154.409 cases. 2.595 civil cases were brought before the High Courts as courts of first instance, and judgment delivered in 881 cases. 2.323 civil cases were brought before the High Courts on appeal, and judgment delivered in 970 cases. 198 civil cases were brought before the Supreme Court, which delivered judgment in 104 cases.

2. Criminal cases

In 1978 judgment were delivered in 57.071 criminal cases brought before the District Courts. Judgment were delivered in 91 criminal cases brought before the High Courts as courts of first instance. Judgment were delivered in 2.447 criminal cases in appeal brought before the High Courts. Judgment were delivered in 24 criminal cases brought before the Supreme Court.

C. Number of judges

At present there are 15 Supreme Court Judges (including the President of the Court) and 63 High Court Judges. The number of District Court Judges, is, as of 1 April 1981, 175.