

R E P O R T
ON
THE POSSIBILITY OF LIMITING THE NUMBER AND LENGTH OF
CASES BEFORE THE SUPREME ADMINISTRATIVE TRIBUNAL

1. Introduction

A Danish report on the possibility of limiting the number and length of cases before the supreme administrative tribunal must necessarily be very different from similar studies in other European countries. The reason is that the Danish system of administrative process differs on material points from those of many other countries in that we do not have dedicated courts for the hearing of cases of administrative law. Powers to hear all types of cases, including cases of public law (like constitutional law administrative law and criminal law) and cases of civil law (like the law of property, family law, and the law of wills and succession) are thus invested in the ordinary courts.

In view of the particular nature of the Danish system of administrative process the report focuses on the Supreme Court of Judicature - the Supreme Court of the Realm - and consequently on a court of extensive judicial powers to hear mostly cases other than those bearing on administrative law.

The report deals with cases where an administrative authority decides questions involving one or more private persons or public authorities. The aim is to prepare specific administrative acts, i.e. declarations to the effect of establishing what is or shall be law in the) appropriate case.

The report extends to actual! execution of authority, e.g. the treatment of patients and other dealings with clients, education, care and nursing of children and elderly people, advice and police activity in patrolling and reporting. Such execution is different from specific administrative acts in that the intent is not to make legally binding decisions in respect of the parties involved.

Cases pertaining to criminal prosecution fall outside the scope of this report. The complexity and special character of these cases would be such as to render an impossible account, were; they to be included in the report. Even so, part 10 will summarize the system of administrative process particular to trials involving punishment for violating the special legislation on the rules of public law.

2. Constitutional Law and the administrative Process

2.1 The Separation of Powers

According to the Constitutional Act (the Constitution of the Kingdom of Denmark Act 5th June 1953 No. 169), s 3, the Legislative Power is with the King and the

Danish Parliament jointly. The Executive Power is with the King, i.e. the Government, which relies on a parliamentary majority in the Folketing. The Judicial Power is constitutioned in the) courts.

"The courts" as expressed in the Danish Constitutional Act, S 3, cover the ordinary courts, i.e. the supreme Court of Judicature and any court of direct or indirect appeal to the Supreme Court, primarily the lower (district) courts and the High Court, Eastern and Western Divisions. Outside "the courts" we find the extraordinary courts (e.g. boards or councils), viz. the tribunals not included in the court organisation and for which the Supreme Court will not act as a court of appeal.

2.2 Trial of the Limits of Powers

One of the most important provisions of the Danish Constitutional Act governing the administrative process is S 63, which lays down that the courts may rightfully decide any case concerning the limits of the Powers. The provision has the following wording;

"S63. (1) The courts of justice shall be empowered to decide any question relating to the scope of the executive's authority; though any person wishing to question such authority shall not, by taking the case to the courts of justice, avoid temporary compliance with orders given by the executive authority.

(2) Questions relating to the scope of the executive's authority may by statute be referred for decision to one or more administrative courts, except that an appeal against the decision of the administrative courts shall be referred to the highest court of the Realm. Rules governing this procedure shall be laid down by statute."

The provision of S 63, ss 1, confers upon the courts the right to try the rulings of the administration and thus to make the final decision in litigations between private persons and the administration. The provision empowers the courts with a direct right only to try questions of lawfulness and not of discretion. Yet the provision does not preclude the courts from examining further in certain areas. "Powers" is an expression extending beyond bodies within the administrative hierarchy to independent, administrative authorities (boards and councils) outside the administrative hierarchy.

The wording notwithstanding the courts have always respected - ever since the Constitutional Act of 1849 - that the Constitutional Act, S 63, ss 1, be construed in a restrictive sense to mean that the Legislative Power can decide that specific administrative rulings (administrative decrees) cannot be brought before the courts. The Legislative Power can furthermore - in lieu of debarring the right of trial absolutely - introduce particular rules for instituting proceedings, including appointing a time-limit for bringing the case before the courts. Access to limiting the competence of the courts in this way has had no avail for the past few decades since the Ministry of Justice in the process of reviewing government's bills has consistently opposed the incorporation into the bills of any such restriction of citizens' protective rights under the rules of law.

The provision of S 63, ss 1, further does not prevent the Legislative Power from debarring access to having

the question of the limits of the powers tried before the Supreme Court in certain cases. Cases brought before a lower court in the first instance can only be taken to the Supreme Court by permission of the Ministry of Justice, cf. below in S.8.

The provision of S 63, ss 1 (2), does not prevent the Legislative tower from attributing a suspensive effect to the remedy. The provision solely establishes that the destinee cannot, by taking the matter to court avoid temporary compliance with the administrative ruling.

The Constitutional Act, S 63, ss 2, opens up for the establishment by law of proper administrative courts. No such administrative courts have been set up, however. The reason is that no need has been found to exist for establishing courts to hear, exclusively, administrative cases since pursuant to the provision laid down in S 63, ss 2, the courts are not allowed to make the final and conclusive decision which may always be appealed against to the Supreme Court. Any administrative courts would therefore have no further functions than those already performed in many important areas by boards and councils, cf. below in 3.7.

3. Administrative Recourse

3.1 Introduction

The Danish administrative system is organised with a clear distinction between Central Government Admini-

stration on the one hand and Local Government Administration on the other hand.

The Central Government Administration is hierarchic in its form. The Ministry (the Minister and his Department) is at the top level. Under the Ministry there are, typically, one or more directorates, and, possibly, associate regional and district government authorities.

The Local Government Administration is divided into 14 regional authorities - county boroughs - and 275 local authorities - primary local governments. The county authorities and the primary local governments perform respective statutory duties, and no hierarchic relationship exists between them.

The administrative organisation further includes a number of boards and councils, which are characterised by their independence from both Government and local government authorities and by their collegiate nature. In addition, a number of administrative subjects, which in respective statutory areas perform special functions. These are e.g. Danmarks Nationalbank (the National Bank of Denmark) and Statsanstalten for Livsforsikring (the State Life Assurance Institute).

The administrative organisation is charted in Appendix 1.

3.2 The Recourse Concept

Administrative recourse designates access to have an administrative ruling tried by a different administrative authority, which - if certain simple conditions are fulfilled - is obliged to verify the decision.

The lawful complainant has access to recourse as of right. This is a distinctive feature of the recourse access from the control in administrative law exercised by supervisory authorities, which are not obliged to initiate investigations by request from a complainant.

The trial through recourse is directed at administrative decisions. The actual execution of authority and course of procedure in preparing the case, as a general rule, are not subject to recourse. The important exception is the right to complain immediately of a decision concerning access to documents according to administrative law or public law. Additionally, any failure in procedure will be adjudicated by the recourse authority in cases where a decision was influenced by consideration of the fact.

3.3 Authority

There is general agreement in Danish literature on administrative law that a citizen has a right to complain of an administrative decision of a subordinate authority to a superior authority even in

the absence of any express authority. The recourse access assumes a relation of superiority and subordination between the authority whose ruling is the cause for the complaint and the authority to decide the complaint.

As far as government authorities are concerned, it follows from the hierarchic organisation of the government services that a relation of subordination and superiority exists between e.g. district government authorities, directorates and the appropriate ministry to the effect that a citizen is allowed to complain of a decision made by a subordinate government authority to a higher government authority, and in the last resort to the appropriate minister. However, many statutes provide that a decision of a subordinate government authority shall not be complained of to a higher government authority within the hierarchy, but to a particular board or a different body considering complaints in the appropriate administrative area. These "complaints boards" or similar bodies are not subordinate to any other authorities, and their decisions can therefore be complained of only if warranted by special statute.

If the competent authority is a local government authority there is generally no way of taking complaints against such local government decisions to a different authority. The reason is that the local governments are to some extent autonomous and therefore, they are not subordinate to any government authorities. In wide areas, however - particularly within Social Security, Environmental and Fiscal

legislation - in order to increase the protective lawful rights of the individual citizen in cases of immediate and vital importance to the person in question, special authority has been given for local government decisions to be complained of to district, regional, or central government authorities, including special boards or similar bodies established for the purpose of considering complaints in the appropriate administrative area.

Some examples of routes for complaints are quoted in Appendix 2.

3.4 Admission of Complaints

The recourse access is not open to everyone. A legal interest is required. Sometimes the persons entitled to complain may be explicitly defined by legislation. Generally, the statutes are not explicit on who has an admissible complaint. In such cases anybody having a material, direct, individual and legal interest in the outcome of the case is assumed to possess a legal title.

In some instances they cause doubts as to whether a person or body of persons (e.g. associations) may have a legal status admitting the complaint. Any evaluation of such status must weigh whether the statute is to be seen as safeguarding the group of persons involved, and whether their interests in contesting the ruling balance the private and public interests in support of making the decision binding immediately. It cannot be ignored that an association

of individuals may exceptionally be considered to hold a legal title not explicitly provided for by law.

The recourse option is primarily a remedy for the protection of individual rights. In the same way the recourse serves to ensure, in the general interest, that misdemeanors do not occur in the administration.

3.5 Particulars of Complaint

Decisions against which a complaint may be lodged with a different administrative authority, if in writing, must be accompanied by instructions on access of complaint indicating the appropriate instance of appeal and with guidelines for the procedure in lodging a complaint and specifying any time-limit.

Unless otherwise regulated, the complaint can be submitted directly to the complaints instance or through the authority constituting the cause for the complaint. The complaint may be oral or in writing, the only requirement being that the recourse authority must be able to understand the essence of the complaint.

Unless specific time-limits for complaints have been laid down, the complaints instance is obliged to consider the complaint even if lodged long after the decision. Such obligation shall lapse, however, if the delay in lodging the complaint makes any reexami-

nation of the decision impossible or an unreasonable amount of trouble is involved.

Lodging of a complaint does not in itself suspend the operation of the ruling unless such immediate operative action will inflict on the complainant an irreparable loss or a loss which can be redressed only with difficulty, and weighty public interests are not at stake. However, the recourse instance is assumed - under its terms of reference - to allow a complaint to stay and, besides, the authority appealed against can decide to suspend the operation until the case has been decided. Very often, the question of suspension is expressly solved by statute.

Unless otherwise laid down, complaints may be lodged at no expense to the complainant under the rules of administrative recourse.

3.6 Procedure and Trial

Unless otherwise laid down, the recourse authority is required to try cases on the same principles as the authority whose decision caused the complaint. It follows that e.g. the complaint will be considered in writing and that the Danish Public Administration Act and Danish Access to Public Administration Files Act also apply to the procedure to be adopted by the recourse authority. The official principle will apply, by which the administrative body (recourse authority) is responsible for procuring all requisite information assisted i.a. by the party involved.

The law rarely contains rules limiting the access of trial for the recourse authority. In cases where no legislation restricts the access of trial, the recourse authority has the right, therefore, to conduct a complete trial of the ruling under consideration, including deciding upon the judicial as well as factual aspects of the case, and any discretion exercised by the first authority.

The result of the trial by the recourse authority – unless otherwise provided for – can be anything from affirmation, criticism, annulment or reversal of the decision.

3.7 Boards and Councils

As mentioned before, the administrative organisation consists of not only bodies within the hierarchy of Central Government Administration or of Local Government Administration. The administrative organisation also numbers bodies with collegiate and, to some extent, independent features. These bodies, which can be local, regional or central bodies, are normally jointly referred to as "boards and councils".

These bodies are very different in nature both in composition and in function. There are three main types: councils, i.e. bodies with advisory functions only; administrative boards whose functions are mostly similar to the ordinary functions performed by the administrative authorities; and quasi-court tribunals performing functions close to the functions exercised by the courts.

The quasi-court tribunals are particularly interesting in relation to the question of administrative recourse as legislation has often provided for a ruling made by a local government or central government authority to be brought up for trial by such a quasi-court complaints tribunal.

The idea of establishing these tribunals is primarily based on the considerations of securing law and order. The legislation therefore often requires the chairman of the tribunals to satisfy the conditions for being appointed a High Court or Lower Court judge. The law can also provide special rules of procedure which implies that the tribunal, in its proceedings, can follow the same rules, in principle, which apply to the courts. In particular, oral proceedings can be introduced in tribunal hearings, and the official principle can step down in favour of the negotiation principle with the consequence that the tribunal is bound by the allegations and representations of the parties, to be thus restricted in its access of examination, and leaving the evidence to be procured by the parties. If no rules of procedure are specified by legislation, the ordinary administrative rules extend to the process.

These complaints boards are part of the public administration irrespective of their quasi-court character. Their rulings can therefore be submitted for trial by the courts according to the general rules of the Danish Administration of Justice Act, cf. below in 5.

4. The Folketing Ombudsman

4.1 Background

The Danish Constitutional Act, S53, contains a provision for determining by law that the Folketing shall elect one or two non-MPs to supervise the civil and military government services.

By the Ombudsman Act No. 203 of 11 June 1954 one person is to be elected the Folketing Ombudsman.

4.2 Terms of Reference of the Ombudsman

The Ombudsman's (or Public Affairs Commissioner) terms of reference were confined, initially, to ministers, civil servants, and all others in control government service. By statutory amendment of 1961, they were extended to include persons engaged in local government service in matters where resort to a central government authority is provided for. A local government council as a whole is not subject to the Ombudsman's jurisdiction, unless he decides to investigate a matter of his own initiative, when a violation of essential judicial interests would be postulated.

The Ombudsman's terms of reference do not extend to the division of administration entrusted to judges and other court staff, Parliament and its committees, or officials of the National Church in matters

directly or indirectly relating to doctrine or gospel.

In contrast to the administrative recourse, the subject-matter of the action with the Ombudsman is not confined to decisions made by administrative law but also includes the execution of authority.

4.3 Actionable Cases

A case is actionable with the Ombudsman by complaint or by the Ombudsman sponsoring investigations into a matter.

Anyone may complain to the Ombudsman. The complainant needs not be a party to the case. This is an "actio popularis", and in this respect, the access to bring a case before the Ombudsman is more liberal than the access to seek recourse with a higher administrative authority. This is balanced by the fact that the Ombudsman may refuse to consider the case.

No particular rules govern the complaint on form or content. However, the complaints must not be anonymous and the complaints should as far as possible be in writing and substantiated by evidence.

Complaints about decisions which may be alterable by a higher administrative authority cannot be referred to the Ombudsman until such higher authority has made its decision. Complaints concerning the execution of authority may nevertheless be lodged with the Ombudsman - irrespective of the existence of any exceptional legal provision for complaining of the

execution of authority to a higher administrative authority and this option of recourse remains unexploited.

Lodging a complaint with the Ombudsman does not have a suspensive effect on the particular administrative ruling. In special cases, however, the Ombudsman recommends that the appropriate authority allow the case to stay. Such recommendations are not legally binding on the authority but carry considerable weight in practice, see below in 4.5.

Any complaint must be lodged with the Ombudsman within a year of committing the act, i.e. one year reckoned from the date of decision or procedure or the actual action took place. In cases where the administrative recourse must be exploited, time is reckoned from the date of decision by the higher authority.

Complaining to the Ombudsman - like any complaint lodged with a higher administrative authority - is free of charge.

4.4 Procedure

The Ombudsman Act makes but few procedural provisions which on principle are identical for complaints received as for cases personally sponsored by the Ombudsman. A general feature is the far more informal procedure with the Ombudsman than with the courts and the administration.

One of the most important principles applying to the procedure with the Ombudsman is the official principle, according to which the Ombudsman himself investigates cases appointed for decision on a point of substance. In this connection the Ombudsman let provides that the administrative authorities are under orders to furnish the Ombudsman with information necessary for the investigation. The contradictory principle plays another key role in the investigation by the Ombudsman. In general, the Ombudsman will submit to the parties concerned (administrative authority and, perhaps, the complainant) the documents of the case before making a decision. The Ombudsman will normally deal with a case in writing.

When the Ombudsman has completed his investigations into the facts and legal consequences on the point of substance, the case is completed by a note or a report sent to the complainant and a copy to the appropriate authority. The report reproduces the actual circumstances of the case and sets out the grounds, in detail, for the conclusion arrived at by the Ombudsman.

4.5 Trial

As far as procedure is concerned, the Ombudsman examines whether the statutes and general rules of administrative law have been observed. He further examines whether the procedure followed by the administration is in agreement with administrative law and "good administration practice". Trial by the

Ombudsman extends to questions of procedure which differ in importance in relation to the decisions of the administration. He examines, inter alia, whether the administration has considered the case within a reasonable time and whether the administration has established special routines to avoid any prolongation of procedure.

On the point of substance the Ombudsman verifies the legitimacy, in particular the question whether the decision made is adequately warranted by law or rules in pursuance of law. In this connection the Ombudsman verifies the fact and interpretation on which the administration based its decision.

As far as discretionary decisions are concerned, the Ombudsman re-examines the criteria for discretion which are subject to judicial regulation. He examines the grounds for exercising discretion, i.e. the validity and adequacy of the actual foundation of the decision of the administration. Furthermore, he decides whether the administration has taken all relevant considerations into account and whether the administration has emphasised matters of irrelevance. On the other hand he does not generally try the actual weighing of relevant discretionary considerations.

Where the examination of execution of authority is concerned, the Ombudsman does not just merely control the legality of administrative acts, he also examines as far as possible the expediency of the actual behaviour of the administration.

The traditional reactions are not at the Ombudsman's disposal. Thus it is not within his powers to declare a decision null and void, and he cannot pass sentence or award compensation. However, he is authorized to direct the Public Prosecutor to institute criminal proceedings against people in the government services and he may direct the relevant authority to institute disciplinary action against public servants. In real life, these powers are not important.

In practice, the most important ways of reaction open to the Ombudsman are that he may state his opinion of the matter to the relevant authority and he may establish deficiencies in current law and administrative regulations and suggest measurements for the promotion of law and order or improvement of the administration.

The Ombudsman's recommendations are largely followed by the administration.

5. The Administration of Civil Justice

5.1 Introduction

The Danish Administration of Justice Act (Promulgation Order no. 567 dated 1 September 1986 with amendments) establishes the legal basis for the organisation of the administration of justice in Denmark. The administration of justice embraces civil justice and criminal justice. The administration of criminal justice comprises the rules governing cases concerning punishment and other legal consequences of a

criminal offence. The administration of civil justice is made up by the rules governing proceedings in civil actions, the bailiff's court and the probate court.

5.2 Court organisation

The ordinary courts of Denmark are the Supreme Court, the High Courts and Lower Courts as well as the Maritime and Commercial Court in Copenhagen.

The Supreme Court is the highest court of the Realm. It consists of a Chief Justice and fourteen other High Court judges. Cases tried by the Supreme Court require a sitting of at least five judges unless otherwise provided for.

There are two High Courts, i.e. the Eastern High Court and the Western High Court. The Eastern High Court has a Chief Justice and 45 other High Court judges. The Western High Court, has a Chief Justice and 22 other High Court judges. The High Courts have jurisdiction both to hear and decide cases in the first instance and to try hearings and decisions by the Lower Courts in appeal cases. Normally three judges sit in cases heard by the High Courts,

The country is divided into 82 lower-court districts having jurisdiction to hear and decide legal actions and effecting judicial acts according to the rules of the Administration of Justice Act. Normally, only one judge sits in cases heard by the Lower Courts.

The Maritime and Commercial Court has jurisdiction, inter alia, in cases where special knowledge of maritime and commercial affairs is particularly important and its decisions may be appealed directly

The ordinary court organisation is charted in Appendix 3.

5.3 Nature of cases

Cases concerning trials of execution of authority are heard within the frameworks of criminal justice or general civil justice. The particular system of administrative procedure for hearing cases concerning violations of the special legislation of public law is discussed in 6.

In a civil case, the examination can take place both in cases between the relevant authority and the citizen as well as in cases to which the authority is not a party. The examination includes not only decisions of administrative law but also cases of execution of authority.

5.4 Right of action

Not everyone has a right to bring an action concerning the application of law by the administration before the courts. They must have a right of action.

Sometimes the question of right of action is decided by statute. In other cases, the principal criterion

for deciding the right of action in regard to a person is the same as in the administrative recourse, viz. the person concerned must have a major individual judicial interest in the outcome of the case.

Trial by the courts of the application of law by the administration - like the administrative recourse - is primarily a remedy for the individual concerned; as a rule, the individual citizen cannot be assumed to have general access out of general social regards to conduct an examination of the legitimacy of the application of law by the administration (*actio popularis*). A further right of action (*actio popularis*) cannot be regarded as completely excluded when it comes to the enforcement by private persons of provisions in public law.

A citizen or an administrative authority do not, according to Danish law, have a right to demand a premature statement from the courts as to how to solve a judicial problem of administration in a case pending the decision of the administrative authority.

5.5 Administrative Recourse, Time-limits, Finality and Suspension

There is no demand for exhausting the administrative recourse. Therefore, nothing prevents a citizen from bringing a case against the administration though he has access to complain of the decision to a superior authority or a particular board of complaint. Citizens will often avail themselves of any free options of recourse before instituting proceedings, and

legislation embodies a number of special rules prescribing the exploitation of recourse as a prior condition of process.

No ordinary time-limit is established for taking a decision made by the administration into court. It is not unlikely that according to circumstances the courts will find for the administration on grounds of laissez-faire if an unreasonable time has passed since a final and conclusive decision was made by the administration. This is particularly true for cases where other citizens are parties to the case and have adapted to the decision. The legislation may further stipulate time-limits within which the case must be brought before the courts. In such cases the administration is under duty to notify the citizen of any time-limits in connection with the decision.

Since the Constitutional Act of 1849 the courts have accepted that finality clauses are incorporated in the statutes to the effect that certain administrative cases cannot be made subject to examination by the courts. Finality clauses have not, however, found their way into statutes for the past few decades, and in practice the courts interpret the finality clause in a restrictive sense so that often they find themselves entitled to try certain questions like the occurrence of formal deficiencies in connection with the decision or whether the administration has twisted its powers, even in spite of any statutory finality clause.

In pursuance of the Constitutional Act, S 63, as 1 (2), instituting proceedings does not have a suspensive effect on the administrative decision. This provision does not exclude that the question of suspensive effect may be expressly provided by statute.

5.6 Procedure

The procedure in cases of administrative law standing trial within the framework of the administration of civil justice is essentially different from the procedure which applied prior to the institution of proceedings.

Preparation of the case by the administration will rely on the official principle, according to which the administration is responsible for the production of evidence. The procedure of the courts on the other hand, adopts the negotiation principle to mean that proceedings will be predominated by the allegations and representations of the parties, and also the production of evidence will be entrusted to the parties. In addition, proceedings will primarily take place as oral negotiations between the parties to be concluded by oral pleadings whilst the procedure followed by the administration - also in the recourse instance - is typically in writing. Representation by attorney is normally required in court actions but is seldom seen in the administration although it is allowed. Furthermore, court proceedings are not free; the plaintiff must pay court fees and the parties are to pay the cost of the case in such a way that the

unsuccessful party is generally called upon to indemnify the opposite party for expenses incurred as a consequence of court proceedings. Upon request, however, a person may be granted free legal aid if he is deemed to have a reasonable cause to carry on a lawsuit and he cannot pay the costs involved without being seriously deprived. Free legal aid in the first instance is granted by the county governor whilst the decisions by the county governors may be ~~complained~~ of to the Minister of Justice. Free legal aid in appeal cases and cases of interlocutory appeal is granted by the Minister of Justice.

5.7 Instituting Proceedings

An action is usually started either in a Lower Court or in the High Court of Justice in the first instance. The principal criterion to decide whether the case is to be brought before a Lower Court or the High Court of Justice is the same whether or not the case is of an administrative character. It is generally decided by the money value of the subject-matter. If the money value of the subject-matter is determinable, the case will start at the Lower Courts. Cases for claims valued at or exceeding a value of DKK 500,000 in money terms must be referred to the High Court of Justice at the request of either party. A Lower Court may furthermore refer a case for hearing in the High Court on the point of principle in the case or if it is instituted by or against a public authority.

If the money worth of the subject-matter is not determinable, the case is to be taken to the High Court provided it is nowhere in the Administration of Justice Act stipulated that the case must be brought before a Lower Court.

Cases for the examination of decisions made by a ministry or a central government instance of complaint of the highest administrative jurisdiction, in deciding cases between public authorities and private persons, must - unless the parties agree on negotiation in a Lower Court - be heard by the High Court. The reason is that the collegiate composition of the High Courts is considered a natural forum for criticism of the highest government authorities. Peering on this point the special legislation may expressly provide for such cases to be heard by the High Court. In such cases it must generally be assumed that the parties are precluded from agreeing on proceedings in a Lower Court.

5.8 Appeal

Although Denmark has a three-tier court organisation (Lower Courts, High Courts and the Supreme Court) the system of appeal allow judgement and other judicial decisions - irrespective of the nature of case or its value - to be submitted to a second but not to a third instance (two instance principle).

The time for appeal from a Lower Court to the High Court is four weeks; the time for appeal to the Supreme Court of a judgement which the High Court of

Justice has pronounced as a court of first instance is eight weeks. Appeal of a judgement .Within the expiry of the time allowed for execution generally has a suspensive effect .

The Administration of Justice Act provides special rules for judgements pronounced by the High Court as a court of appeal to be referred to the Supreme Court by special permission (third instance permission) from the Ministry of Justice. Such permission presupposes a case to touch upon principle or the existence of special grounds. Application for third instance permission must be submitted to the Ministry of Justice not later than eight weeks after pronouncement of judgement. The Ministry of Justice may exceptionally grant third instance permission if the application is delayed, such later date not to exceed one year after the pronouncement.

5.9 Trial

The paramount rule for court re-examination of the execution of authority is to find out whether an administrative decision should be declared void with the consequence that the courts will make, a new decision substituting the void decision, that the decision is nullified, or the case is remitted for reconsideration by the administration. The object of the examination may also be aimed to find out if coercive measures may be adjudicated, particularly liability for damages. The question of liability for damages is of particular importance in connection with an examination of the execution of authority,

The courts do not hold back from examining the assesment of the actual facts on which the administration relied for its decision. If the courts find that an error has been committed in fact, the real fact will be adopted for the grounds.

The re-examination by the courts of the judicial aspects of administrative decisions, on the other hand, is more or less penetrating according to the nature and legal basis for the administrative decision submitted for trial. The intensity of court control depends on many factors, including to what extent the administration by its decision was restricted by rules of law of the type which the courts usually adopt as a basis for their own decisions.

Thus the courts examine whether the administration has set aside the rules of procedure, including the rules on capacity and the hearing of parties. The courts further examine whether the decision of administrative law is sufficiently warranted by statute or regulations issued in pursuance of law. As far as discretionary cases are concerned, the courts examine whether the decision relies on matters of irrelevance or whether the doctrines of equality or proportionality might have been ignored. The courts will generally not, however, go into an examination of the weighing of considerations on which the administrative decision relied. In some cases the courts may specifically be called upon by statutory provision or assumption to make a complete examine-

tion of the discretion exercised by the administration.

6. System of Administrative Procedure for the Trial of Cases Concerning Violation of the Special Legislation within Public Law

Public law statutes generally prescribe punishment for the violation of particularly important regulations including disobedience or neglect of a ban or a prerequisite for a permit or certification as laid down by law.

The typical sanction for an offence under public law is a fine letting the sentence be calculated according to a rates system. In this context, the police has general authority to prepare a fine in lieu of prosecution and the case can then be decided out of court, if the accused admits his offence. Public law legislation - notably within direct and indirect taxes - empowers the administrative authorities to decide cases by a fine.

In cases where a fine is no option, the accused must be charged in accordance with the general rules of criminal justice. Cases are usually tried as police cases and it devolves upon the Chief of Police to prosecute in a Lower Court. The cases are normally adjudicated by one professional judge who will be assisted by two assessors in cases where the penalty is likely to rise over a fine or where the case is otherwise deemed to interfere seriously with the private life of the accused or the case carries

particular public interest. During the proceedings the courts try the legal basis for the claim asserted by the administration, i.e. they test the rules of procedure and questions of authority until the restrictions applying to the examination of the discretion in administrative law.

No later than 14 days after sentence has been passed may the accused or the Public Prosecutor appeal against a Lower Court judgement to the appurtenant High Court. In police cases, however, the Prosecutor can appeal against a the Lower Court judgement to the High Court only if legal consequences other than fine and sequestration may result according to the provisions claimed in the indictment. The accused can furthermore appeal to the High Court only if he has appeared in court and has been sentenced to more than ten daily penalties or a fine of DXX 1,000 or the sequestration of objects of a similar value or other consequences adjudicated in pursuance of public law. The Ministry of Justice may, however, grant permission to appeal judgements which are not immediately subject of appeal to the High Court on the point of the principle character of the case or if advocated on specific grounds.

The judgment pronounced in appeal by the High Court cannot be appealed to the Supreme Court. However, the Ministry of Justice may grant permission of appeal on the point of the principle character of the case or if advocated on specific grounds.

7. Statistics

The Danish public administration employs over 700,000 people who make millions of decisions every year in addition to actual execution of administration.

The Folketing Ombudsman recorded 1,875 cases in 1988. 95 were sponsored by himself.

There are no reliable data on the number of administrative cases heard by Danish courts. There are reasons to believe that - inclusive of cases concerning transgressions under administrative law - the number may be less than 10,000. The number of cases for examination by the courts of administrative decisions within civil jurisdiction is thus, presumably, below 1,000. By way of comparison three of the quasi-court tribunals - the Special Tax Tribunal, the Social Board of Appeals, and the Unemployment Insurance Tribunal - estimated that they would decide about 6,800, about 8,000, and about 1,000 cases, respectively, in 1988.

The Lower Courts heard 220,805 civil lawsuits in 1988 whilst the Eastern High Court and the Western High Court heard 1,329 and 634 civil cases as courts of first instance. Decisions in civil appeal cases counted 1,601 and 1,223, respectively, in 1988.

In 1988, the Supreme Court decided 286 appeal cases within civil justice. Judgements were pronounced in 159 cases. Additionally, 13 cases were taken to the Supreme Court on the basis of third instance permis-

sion from the Ministry of Justice. Far below half of the appeal cases before the Supreme Court are concerned with administrative law and about 1/3 are concerned with tax law. Of the 1988 decided appeal cases three cases lasted between two and six months, thirty varied between six and twelve months, and 125 lasted one year or more. In 1989 the length of cases was drastically reduced as preparation before court procedure is now commonly in writing. Time appointed for proceedings in court has currently been reduced to four months.

8. Conclusion

There are many screens within the Danish system of administrative law filtering the majority of cases brought before the courts including the Supreme Court of Judicature. As a paramount rule, the organisation of administrative authorities allow a citizen to have the administrative ruling tried by one or more subsequent administrative authorities, usually free of charge. The administrative recourse ensures an effective examination of the decisions complained of. Wrong decisions will be altered by the instance of complaints, which eliminates the reason for a complainant to take the case to the courts for trial. In cases where the decision is upheld, complainants often find satisfaction in having their case tried by an instance of complaints - particularly because the grounds often account for the outcome in more detail and in easier terms viewed against new material, a more thorough hearing of the case and contradiction, offering the complainant an opportunity to make a

coherent representation of his case. This is especially true in cases where the instance of complaint is an administrative board of quasi-court character, whose competence and objectivity appear trustworthy in the minds of citizens.

Complainants who declines contentment with the administrative decision made by instances of complaint are given a free option to complain of the case to the Folketing Ombudsman. The Ombudsman is also empowered to decide complaints of the actual execution of authority which, generally, is not subject to administrative recourse. The Ombudsman contributes in this way to reducing the number of cases concerning the actual execution of authority which citizens institute against the administration.

A further measure limiting the number of cases before the courts is in the fact that Danish law does not provide general access for an individual - out of general social regards - to contest the legitimacy of the law as applied by the administration (*actio popularis*); the citizen has to prove his right of action/ i.e. a major/ judicial/ individual interest in the outcome of the case.

Even in cases where the citizen does have a right of action, he will often hesitate before instituting proceedings against the administration. The lawsuit costs money because - except for cases granted free legal aid - the citizen must pay the costs of the case, including court fees and legal expenses, and he may expect to have his expenses reimbursed provided

only judgement is pronounced in his favour. Court examination of the discretion exercised by the administrative authority is also restricted to the effect that the citizen is not generally encouraged to institute proceedings against the administration unless he can point to any legal deficiency in the decision made by the administration.

One more screen enters when the discussion is about bringing administrative cases before the Supreme Court. If a lawsuit against the administration is to be instituted at the Lower Court as the court of first instance, the decision of the Lower Court can only be tried by the High Court, owing to the two instance principle. The possibility of the Ministry of Justice to grant third instance permission for a decision in an appeal case heard by the High Court to be brought before the Supreme Court as well, is only used on very few occasions because it is stipulated that the matter must be of a principle character or that special circumstances must be present.

Only where the administrative case is instituted at the High Court as the court of first instance, will there be general access for the party to take the decision of the High Court to the Supreme Court. Such occasions are rare but may arise when the money worth of the subject-matter is not determinable, and the case is not subject to hearing by a Lower Court, or if it concerns a matter of principle or particularly serious interference (e.g. cases concerning money values over DKK 500,000 if one of the parties requests that the case be referred to the High Court),

or if instituted against the highest administrative authorities within the government services.

There is no reason for debarring, generally, the access of examination in the Supreme Court in these cases, and as a matter of principle, a case should always be allowed for trial twice. In addition these cases typically touch upon matters of principle or particularly serious interference so there is a need for these cases to be allowed trial by the Supreme Court of the Realm.

Cases before the Supreme Court take rather a short time owing to the fact that preparation before proceedings is primarily in writing. The time appointed for hearing the case is currently down at four months and should not be reduced any further if the counsels of the parties are to have a reasonable time in which to prepare the case thoroughly before proceedings.

Against this background it is concluded that the Danish system of administrative process is such that at the moment there is no need to reduce the number and length of administrative cases before the Supreme Court of Judicature in Denmark.

ADMINISTRATIVE ORGANISATION

Appendix 1

	Independent bodies		Central Government Administration	Local Government Administration
Central Level	Special Administrative Subjects	Boards and Councils	Minister The Department The Directorate	
Regional Level	Regional Boards and Councils		Regional govt authorities	County authority
Local Level	Local Boards and Councils		District govt authorities	Primary local govt

Appendix 2

The Appeal System in Different Administrative Areas

1. Relief Cases in Social Security

According to the Social Security Act (Promulgation Order No. 171, dated 25 March 1987 with amendments on social security) the primary local government (local government board) is invested with powers to decide cases of social security, including decisions concerning financial relief.

Decisions of the primary local governments may - within four weeks of notification of the decision to the person concerned - be brought before the County Board of Appeals, and in Copenhagen and Frederiksberg, before the Social Board of Appeals. A County Board of Appeals has been set up for each county consisting of 3 members whose terms of reference make them quite independent of instructions relating to procedure and decision in the individual case. The Board may rule that the decision causing the complaint be dismissed, affirmed, rescinded, or reversed. The Board may furthermore remit the case for re-examination by an authority which has not previously ruled in the case. The Board is not in any way restricted in its dealings by the allegations of the parties.

Decisions of the County Board of Appeal cannot be brought before any other administrative authority.

The Social Board of Appeals may admit a case for proceedings if the Board finds that the case concerns a matter of principle. The Board, whose terms of reference make it independent of instructions relating to the procedure and decision of individual cases, consists of a Chief Commissioner, Commissioners and a number of designated members as well as a secretariat. The Chief Commissioner and his Commissioners must hold graduate certificates in law, political science or economics, or be similarly educated. The administration of the Board is managed by a secretariat assisting the Commissioners in considering cases submitted to the Board. The decisions of the Board are generally made in a meeting between one Commissioner acting as chairman and two designated members. The Board may decide to dismiss, affirm, rescind or reverse the decision constituting the cause for complaint. The Board may remit the case for re-examination or refer it for hearing by an authority which has not previously ruled in the case. The Board is not restricted by the allegations of the parties.

The recourse system is organised as follows

The Social Board of Appeals

County Board
of Appeals

County Board
of Appeals

Copenhagen and
Frederiksborg
Local Govts

Primary
Local Govt

Primary
Local Govt

Primary
Local Govt

Primary
local Govt

2. Cases Under The Aliens Act

The Aliens Act (Promulgation Order No. 462 of 26 June 1987) empowers the Directorate for Aliens to act as a first instance for decisions in cases concerning visa, residence and labour permits, etc. to foreigners.

Decisions made by the Directorate for Aliens may generally be complained of to the Ministry of Justice. No statutory time-limit has been specified for the complaint.

Complaints against decisions made by the Directorate for Aliens concerning some special refugee questions must be brought before the Refugee Board. They are cases in which the Directorate for Aliens refuses to grant an employment permit to a foreigner who claims to qualify under the refugee provisions of the Aliens Act. They are further cases in which a permit granted according to the refugee regulations is repealed or withdrawn and cases in which the Directorate for Aliens refuses to issue a Danish traveller's document for refugees or withdraws such a traveller's document. Lodging a complaint with the Refugee Board has a suspensive effect.

The Refugee Board consists of a chairman and a number of vice-chairmen and other members as determined by the Minister of Justice. In considering a case the Board generally sits with the chairman or one of the vice-chairmen, and six members, three of which are to be designated upon recommendation from the Minister

for Social Affairs, the Foreign Minister or the Board of Counsels as well as two members designated upon recommendation from the Danish Refugee Council. The chairman and the vice-chairmen are to be professional judges. Designations made by the Minister of Justice extend for a period of four years.

The Refugee Board makes its own inquiries into the case and makes decisions on the hearing of the foreigner and testimonies and on the procurement of other evidence. The Refugee Board may, if necessary, assign a counsel for the foreigner, who must be given an opportunity to familiarise himself with the documents of the case and to make a statement thereon. The foreigner or the assigned counsel are furthermore entitled to present the case to the Board, and the Board can decide on oral proceedings.

The recourse system in the sphere of the Aliens Act is organised as follows:

The Refugee Board

The Ministry of Justice

The Directorate for Aliens

Appendix 3

Ordinary Courts Organisation

The Supreme Court of Judicature

**High Court of Justice
Western Division**

**High Court of Justice
Eastern Division**

**Lower
Court**

**Lower
Court**

**Maritime and Com-
mercial Court**

**Lower
Court**

**Lower
Court**