

The legal review of administrative decisions: the respective role of administrative and civil or penal courts and their relationship.

Denmark

1. Introduction

The answers to the questionnaire have been elaborated in preparation of the XVith Colloquium of the Council of State and the Supreme Administrative Judicial bodies of the European Union in Stockholm on 15 - 17 June 1998.

2. The field of application of legal review

2.1 Is there a legal definition of the concept of "administrative decisions" or is this concept well-defined in case-law?

The concept is rather well defined in case law. Judicial review covers administrative decisions, including refusals and permissions, as well as acts and omissions.

2.2 Are there any general legal provisions distinguishing between administrative decisions which can be the object of legal review by a court and other administrative decisions?

2.3 Are there non-statutory but generally accepted rules concerning this distinction?

According to section 63 of the Constitution the courts may review "any question concerning the limits of administrative authority". Traditionally, it is the general understanding, that the court review may

be excluded by statute, but such provisions of "finality" are very rare in Danish law, and they have been interpreted narrowly by the courts, taking into account inter alia the composition of the administrative authority in question (cf. the majority opinion of the Supreme Court decision from June 1997 (UfR 1997 p. 1157) . The court found that it followed from an express provision in the Aliens Act, that the decision by the quasi-judicial Refugee Board concerning expulsion could not be subject to judicial review). Notwithstanding such provision the courts will review assertions that errors of administrative procedure have occurred or that illegitimate considerations have been taken into account.

2.4 Are there any special legal provisions for the different fields of law?

The Constitution provides explicitly for court review of administrative deprivation of liberty, for instance commitment to a mental hospital, and of decisions on expropriation. Some statutes specifically provide for court review, e.g. tax laws.

2.5 What are the main characteristics of decisions which can be object of legal review (final decisions, decisions having binding effect, decisions against the interest of the appellant etc.)?

2.6 Which are the most frequent categories of administrative decisions that can resp. cannot be the object of legal review?

The plaintiff must have a specific and actual interest in the case (standing). Typically, this will involve binding decisions addressed to a specific natural or legal person, but also plans on regional development directly affecting a person may be subject of review. In environmental law the concept of standing is broadly defined. For instance, it has

been possible for *Greenpeace* to bring judicial action against the decision to build a bridge between Denmark and Sweden (UfR 1994 p. 780 Ø).

The administrative decisions need not be final in the sense that they are no longer subject to administrative review.

2.7 Which are the time-limits for lodging petitions for legal review?

There is no general time limit. However, in some statutes time limits are provided.

2.8 Are there any important amendments in process or planned regarding these questions?

No.

3. The substance of legal review

3.1 Does the legal review cover issues of law and matters of facts as well as questions of suitability?

The review covers issues of law and matters of fact.

The courts are also competent to review the exercise of administrative discretion, i.e. fields where the statute provides that the administration *may* take certain steps but does not specify the conditions or does so in broad terms only. However, with regard to the administration's weighing of lawful considerations, a considerable judicial restraint is shown.

3.2 Is the extent of the review different depending on the field of law?

No.

3.3 The powers of the court

3.3.1 Has the court the power not only to quash an incorrect administrative decision but also to modify such a decision?

Normally, the court may declare the administrative decision invalid or may, on the plaintiff's demand, award damages. Usually, the court will not modify the decision, i.e. replace the administrative decision by the court's own decision, but instead the court will remit the case for administrative re-examination. However, in tax cases, a modified amount is often fixed by the court, if no further administrative examination is needed.

3.3.2 In this respect are there different rules in the different fields of law?

No.

3.3.3 Are the powers of a court of first instance different from the powers of a superior court?

No.

3.4 Are there any important amendments in process or planned concerning the substance of legal review?

No.

4. Courts exercising legal review

4.1 A summary description of the court organization

4.1.1 What different categories of courts are there (e.g. civil or penal courts, administrative courts, tribunals etc.)?

In principle two categories: Civil and penal courts. Within these main categories there exist some special courts, e.g. the Maritime and Commercial Court in Copenhagen and the Labour Court. Denmark has no administrative courts, and legal review of administrative decisions may be exercised by any court. However, lawsuits against the ministries and other central administrative bodies must be brought before the Court of Appeal as first instance.

It is characteristic of Danish administrative law, that quasi-judicial boards of appeal in many fields are inserted between the normal administrative authorities and the courts. A great number of such boards are established by statute, covering a large part of the administrative law field, for instance taxation, environment protection, granting of asylum and rent control. Under such a system a very substantial number of the administrative disputes are solved without judicial action, although the decisions of the boards may be reviewed by the courts. A further distinctive feature is that the statutes setting up such boards very often require that a judge acts as the chairman of the board. In principle, evidence and other information is procured *ex officio* by the board, and normally the parties need not be assisted by a lawyer.

4.1.2 How many instances are there within each category?

Three. When the Supreme Court is acting as the third instance, a leave from a special board ("Procesbevillingsnævnet ") is required in order to bring the case before that court.

4.1.3 How many courts are there within each instance?

One Supreme Court, two Courts of Appeal, that in some cases act as a court of first instance, and 82 city courts.

4.1.4 Are the different categories of courts to some extent co-ordinated regarding the organization, e.g. regarding staff or premises (only the principal features)?

Yes. Matters of organization, e.g. staff, premises, office equipment, are handled by the Ministry of Justice. The financial means for the running of the courts form a part of the total appropriations of the Ministry. At present, a Government bill proposing the establishing of an independent court administration is pending in Parliament.

4.2 The career as a judge

4.2.1 Is there a common career for the entire court organization or are there in principle separate careers?

Basically, two different tracks may lead to the appointment as a judge, but that separation is not related to the category of courts. After University you may start as a deputy judge in a city court following an education and a career through the court system or you may work for a number of years in the Ministry of Justice with a temporary post as deputy judge as part of the education. The judges of the city courts are normally recruited from the ranks of the deputy judges, while the percentage of judges with a previous career in the Ministry of Justice is higher at the level of appellate courts.

4.2.2 If there are separate careers, is it possible to appoint a judge belonging to a court of one cate-

gory to a post at a court of another category and, if that is possible, does it often occur?

See 4.2.1

4.2.3 Can judges be recruited from other legal professions, e.g. prosecutors, lawyers and professors?

Yes. In practice however, most judges have followed the career pattern described under 4.2.1. The question of recruitment of judges is broadly debated, and it has been argued that the current system may discourage applicants from other legal professions. Parliament is considering a proposal to set up an independent board with the task of examining applications and submitting to the Minister a candidate for appointment.

4.3 To what extent do laymen take part in the adjudication process?

In civil cases, including cases involving review of administrative decisions, lay judges participate only in certain categories of cases, for instance in disputes between landlords and tenants and in the Maritime and Commercial Court in Copenhagen. In criminal cases, in the city court two lay judges take part in the adjudication (except police-court cases and cases where the accused pleads guilty), while three lay judges participate in the Court of Appeal. Trial by jury is reserved for the most serious crimes. Legal review of administrative decisions may also be exercised by penal courts, and lay judges are in that respect on an equal footing with the professional judge(s).

4.4 How is the distinction made between the fields of competence of the different courts, by general provisions or by detailed enumeration in the legisla-

tion?

By general provisions, for instance "cases requiring knowledge of maritime or commercial matters".

4.5 What are the general rules concerning the competence of the courts, i.e. what kind of cases are dealt with by the different categories of courts?

4.6 What courts are handling the legal review of administrative decisions and may the review be carried out by more than one category of courts?

4.7 Is the development heading towards the establishment of new administrative courts or towards a widened competence for the already existing courts or is there a trend in the opposite direction, i.e. towards the suppression of the administrative courts?

See 4.1.1. Having a single track judicial system with no administrative courts, the issue of distribution of competence between different categories of courts seems less pertinent to the question of judicial review in Denmark.

4.8 Are there any important amendments in process or planned concerning the court organisation?

In order to ease the case-load of the Supreme Court it has been proposed to restrict the right of appeal in tax cases. Under the current system a tax case decided by the highest administrative tax authority, which is a quasi-judicial body ("Landsskatteretten"), may be brought to the Court of Appeal as a first instance and thereafter to the Supreme Court. It is proposed that such appeal should require a leave from the Board referred to under 4.1.2 if the value of the case is less than 500.000 kr. (about 65.000 ecu).

See also 4.1.4 and 4.2.2.

5 The proceedings at the courts

Indicate if and - in that case - in what way the proceedings in administrative cases differ from the proceedings in ordinary cases concerning the following questions:

Proceedings in administrative cases are a two-party process governed by the same procedural rules as ordinary civil cases. Therefore, in principle the proceedings do not differ from ordinary cases. Consequently, only questions 5.1 and 5.3 are addressed in the following.

5.1 How are the proceedings initiated?

Usually, by institution of legal proceedings against the administrative body by the person claiming that the decision is wrong. In some fields it is provided by statute that the administrative body shall bring the case before the court if the citizen challenges the administrative decision, for instance in cases where the administration refuses an authorization to a trade or withdraws such authorization. However, the case before the court remains a litigation between two parties, i.e. the citizen and the administrative body.

5.3 Is the court responsible for the case being sufficiently investigated?

No - with a few exceptions, e.g. review of administrative decisions on deprivation of liberty (cf. 2.4 above).

**6 The relationship between the civil or penal courts
and the administrative courts**

The questions are not pertinent in Denmark, since we
have no administrative courts.

7 Miscellaneous

No specific comments