CCPR

INTERNATIONAL COVENANT ON CIVIL AND POLITICAL RIGHTS

Distr.
GENERAL

CCPR/C/1/Add.19
3 January 1978

Original: ENGLISH

Human Rights Committee
Third session

CONSIDERATION OF REPORTS SUBMITTED BY STATES PARTIES UNDER ARTICLE 40 OF THE COVENANT

Initial reports of States Parties due in 1977

Addendum

DENMARK*

Additional information

[22 December 1977]

I. Introduction

At its second session, held in Geneva from 11 - 31 August 1977, the Human Rights Committee adopted a set of general guidelines relating to the form and contents of reports to be submitted by States Parties under Article 40 of the Covenant and decided to inform States Parties which had already submitted their initial report that they might wish to furnish the Committee with revised reports or additional information in accordance with the above-mentioned guidelines.

The initial report by Denmark, contained in Document CCPR/C/1/Add.4, relates only to Part I of the now adopted general guidelines. The reason was precisely the absence of guidelines on how the Committee wanted States Parties to present their reports under Article 40 - by group of Articles or Article by Article, over a certain period of time or at one time.

---

*/ The first part of the initial report of Denmark, dated 21 March 1977, was issued in document CCPR/C/1/Add.4.

GE.78-1013

Digitized by UNOG Library

From the guidelines now adopted the Danish Government understands the wish of the Committee to be to receive law and practice reports under each of the Articles in Parts I, II, and III of the Covenant at one and the same time. This being so, the Danish Government regrets to inform the Committee that within the short period of time available since receipt of the general guidelines adopted by the Committee it has not been possible to prepare all the required additional information. In the present additional report the Committee will have before it a description of the implementation in Denmark of Articles 1-7 and Articles 17-22 of the Covenant.

Before presenting this information the Danish Government wishes to draw the Committee's attention to the Danish instrument of ratification of the Covenants deposited with the Secretary-General on 6 January 1972. As will be seen from this instrument and the accompanying Note the Danish Government, before ratifying the Covenants, made an in-depth study of each individual Article as compared to similar provisions in Danish law. In some instances it has proved necessary to introduce new legislation in order to comply with the provisions of the Covenant on Civil and Political Rights, i.e. Art. 14, par. 3(d) and (e), and Art. 20, par. 2. In a few other cases where discrepancies have been recognized between the Covenant and the existing legal situation in Denmark reservations have been entered for the time being (Articles 10, 14 and 20). In respect of all other provisions of the Covenant on Civil and Political Rights it has been ascertained that domestic law in Denmark is in harmony with the Covenant, a situation which is supported by the fact that already in 1953 Denmark was able to ratify, without reservations, the European Convention on Human Rights, the provisions of which by and large correspond to those contained in the Covenant.

II. Information concerning the implementation in Denmark of the rights contained in each of the Articles in Parts I, II and III of the Covenant.

Part I, Article 1

At its ninth session on 22 November 1954 the United Nations General Assembly adopted a resolution concerning Greenland in which the Assembly, having been informed by the Government of Denmark that as a result of the adoption on 5 June 1953 of a new Constitution Greenland had become an integral part of the Danish Realm with a constitutional status equal to that of other parts of Denmark, and having received and examined a comprehensive review of the political relationship that had evolved between Greenland and Denmark, decided inter alia to take note of the fact that when deciding on their constitutional status, through their duly elected representatives, the people of Greenland had freely exercised their right to self-determination (Resolution 849 (IX) operative 4, United Nations Yearbook 1954, pages 319-23).

Recent years have witnessed an increasingly insistent desire among the people of Greenland for the Provincial Council of Greenland to be invested with increased responsibilities and influence.

Digitized by UNOG Library

This desire is a natural consequence of the progressive strengthening since 1956 of the popularly elected bodies in Greenland, which has most recently manifested itself in the 1975 reform regarding the distribution of burdens and tasks.

In 1972 the Provincial Council presented to the Ministry of Greenland a request for local autonomy. Acting on this request, the Minister for Greenland set up the Committe for Local Autonomy in Greenland, composed of popularly elected Greenland politicians.

On 18 February 1975, the Committee submitted a preliminary report (to be used as a negotiating platform) defining the special areas in which the responsibilities and influence of the Provincial Council should be increased. The report concluded in a recommendation to the effect that the formal basis for a system of local autonomy within the Kingdom be provided as soon as possible so that the principles of the local autonomy system could be established and the necessary legislation enacted for gradual transfer of responsibilities and influence to the Provincial Council.

To prepare for local autonomy in Greenland, the Minister for Greenland in 1975, in agreement with the Provincial Council, set up a Commission composed of five members elected by the Provincial Council from among its members, the two Greenland members of the Folketing (parliament) seven members elected by the Folketing from amongst its members, and a chairman nominated by the Minister for Greenland.

The task of the Commission is to study, principally on the basis of the preliminary report of the Committee for Local Autonomy, in what areas and by what means the responsibilities and influence of the Provincial Council can be increased. In the light of this study, the Commission will make recommendations for establishing a system of local autonomy within the Kingdom.

Moreover, the Commission will recommend a sequence and time-table for increasing the responsibilities and influence of the Provincial Council. Finally, the Commission will suggest principles according to which financial schemes can be established for the individual areas.

The Commission has not yet completed its work but according to its preliminary deliberations it would seem possible to introduce local autonomy in 1979, initially in the social, cultural and educational fields.

A similar situation does already exist with regard to the Faroe Islands.

The Faroes have belonged to the Kingdom of Denmark since 1380 and formed a Danish county down to 1948. Apart from a certain amount of special legislation, it was equal in status with other counties.

As the islands during the Second World War were cut off from the rest of the Kingdom and compelled to manage their own affairs, an old demand for self-government was raised after the war, and Faroese home rule was introduced in 1948.

Digitized by UNOG Library

Under the Home Rule Act (Hjemmestyrelov) of March 17, 1948, the democratically elected Faroese assembly, the lagting (Logtingid), is the legislative authority in certain spheres, chiefly relating to Faroese economic affairs. An administrative body appointed by the Lagting, the Landsstyre (Landsstyrid), administers these affairs. All other Faroese matters are administered jointly by the central Danish Government. These include foreign affairs, civil law, the police and judiciary, social welfare, ecclesiastical affairs, and education.

Part II, Articles 2 - 5

Article 2. In respect of the first paragraph it is the view of the Danish Government that this paragraph in concrete terms state the principle of non-discriminatory treatment which is already implied by the formulation of the relevant individual rights recognized in the Convenant ("Every human being", "No one", "Every one", "All persons" etc.). Having implemented these rights in Danish law, Article 2, par. 1, does not call for any separate measures of implementation.

With regard to the second paragraph of Article 2 reference is made to the information contained in the initial report by Denmark (Doc. CCPR/C/1/Add. 4). As to the third paragraph of Article 2 reference should first of all be made to the judicial protection of the individual against the Executive. The principal provision is contained in Article 63 of the Constitution which reads:

> §63. (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.

As a result of this procedure an administrative act may be declared invalid and restitution or compensation rendered the individual. Supplementary to this provision the question of offences committed while exercising a public office or function is dealt with in the Danish Criminal Code, Chapter XVI (Section 144 - 157). Of special interest in the present context is Section 146 which reads as follows:

> 146. (1) If any person invested with jurisdiction or other public power to make decisions in any matter affecting the legal rights of private persons commits an injustice in deciding or examining the case, he shall be liable to imprisonment for any term not exceeding six years.
>
> (2) If such injustice has impaired the conditions of life of any person, or if such effect has been intended, the penalty shall be imprisonment for not less than three nor more than sixteen years.

Digitized by UNOG Library

A general survey of the Danish Judicial system is attached to the present report (Annex I).

Other remedies against the Executive consist in appealing to a superior administrative authority and complaining to the Ombudsman. Article 55 of the Constitution provides for the appointment by the Folketing (Parliament) of one or two persons to supervise civil and military administration.

The Ombudsman Act (Act No. 203 of 11 June 1954) vested the powers in one person. Initially, his terms of reference were restricted to central government administration, but certain areas of local government administration were included under an amendment in 1961.

The first Ombudsman was appointed on 29 March 1955.

The jurisdiction of the Ombudsman extends to all parts of the Kingdom of Denmark, i.e. metropolitan Denmark, the Faroe Islands and Greenland.

A translation into English of the Ombudsman Act as most recently amended by Act No. 258 of 9 June 1971, and a review of the Ombudsman's duties and powers are annexed to the third periodic report by the Government of Denmark submitted under article 9 of the International Convention on the Elimination of All Forms of Racial Discrimination (doc. CERD/C/R.98/Add.3). For the convenience of the committee the documentation is also attached to the present report (Annex II and III).

Lastbut not least reference should be made to the acceptance by Denmark of the international machinery for the protection of human rights established both under the European Convention for the Protection of Human Rights and Fundamental Freedoms and the Covenant, thus enabling any person within Danish jurisdiction who claims to be a victim of a violation by Denmark of any of the rights set forth in these instruments to institute proceedings at the international level after having exhausted the domestic remedies available in Denmark.

Article 3. Reference is made to the comments submitted in relations to Article 2, par. 1, of which the present Article represents a particular restatement with regard to sex.

In order to promote equal status for men and women in all sectors of life a Council on Equality was established by the Danish Government on 2 September 1975 with the following terms of reference:

> "1. To follow social developments, legislation, the labour market; investigate conditions which are counterproductive to equality of status; to propose measures that will change such counterproductive conditions.

Digitized by UNOG Library

2. To act as an advisory and co-ordinating body to central and local government on issues involving equality of status for men and women.

3. To draw up proposals for research in the field of equality of status for men and women and promote information activities on the subject, for instance through distribution of publications et al."

The Council on Equality of Status, whose chairman is appointed by the Government, seats representatives of the principal organisations of labour and management and of women's organisations in Denmark and Greenland.

In 1976 the Council on Equality of Status initiated a follow-up of the proposals and viewpoint put forward in the report of the Commission on Women. The Council on Equality of Status has asked various ministries and boards for information on any steps they may have taken, either through legislative measures or in practice; whether they have adhered to the proposals and recommendations of the Commission on Women; and whether they have taken any initiatives of their own, or contemplated ways in which they may directly or indirectly promote equality of status for men and women.

Articles 4 and 5. These Articles do not call for any specific measures of implementation within the Danish legal system. The provisions of Articles 4 and 5 will be regarded as legally binding guidelines for the Danish authorities, respectively, in the event of a state of public emergency and when interpreting the rights recognized in the Covenant.

Part III, Articles 6 - 27

Article 6. Danish law satisfies the requirement described in this article.

Capital punishment may only be imposed for the following offences committed in time of war or enemy occupation:

(1) Certain criminal offences committed in time of war or enemy occupation, viz. (as specified in Criminal Offences in Time of War or Enemy Occupation Act (No. 227) of 17 June 1952, section 1 (1)) offences - in furtherance of enemy interests and under otherwise aggravating circumstances - violating any of the provisions of the Civil Criminal Code relating to offences against the independence and safety of the State (sections 98, 99 and 102(3); offences against the Constitution and the supreme authorities of State (section 111); premeditated homicide (section 237).

Capital punishment under this act cannot, however, be imposed on persons below the age of 21 years.

(2) Military Criminal Code (applicable in time of war), sections 17, 18, 33, 34(1) and 35(3), respectively: Mutiny; homicide of superior officer, superior or guard;

Digitized by UNOG Library

war treason; cowardice in the face of enemy shown by commanding officer; military espionage.

Capital punishment under this code cannot, however, be imposed on persons below the age of 18 years.

Furthermore, capital punishment cannot be executed on pregnant women or in case of unsound mind or sudden serious illness (Administration of Justice Act, section 1001), or if the court passing sentence sees grounds for recommending pardon or less severe punishment, or if the convict submits a petition for pardon or less severe punishment, provided that a previous petition has not been rejected.

A sentence of capital punishment which has not been executed at the time of cessation of hostilities will be commuted into imprisonment for life (Military Criminal Code, section 11(4)).

The High Court, as the court of first instance, assisted by a jury (Administration of Justice Act, section 687, (1) (a)) is vested with the jurisdiction to pass a sentence of capital punishment.

If the accused unreservedly pleads guilty and if his guilt is corroborated by evidence otherwise produced, jurisdiction to pass a sentence of capital punishment may be exercised by an inferior court without the assistance of lay assessors, subject to the consent of the accused and the counsel for his defence (Administration of Justice Act, section 867 (2); see also section 925).

No special procedure is provided for by law in cases where a sentence of capital punishment is passed.

Under general rules of law (Administration of Justice Act, section 999) a sentence cannot be executed until after the expiration of the time-limit set for appeal under general rules of law, generally fourteen days, or until appeal has been waived.

Where a petition for re-trial has been lodged, the court of appeal may decide to postpone execution. If a petition for re-trial is granted, execution shall be postponed (Administrations of Justice Act, section 986).

The High Court or, in case of appeal, the Supreme Court, when passing a sentence of capital punishment shall declare whether it sees grounds for recommending reprieve. Such declaration shall be submitted to the Minister of Justice after the expiration of the time-limit allowed for appeal or, as the case may be, after the Supreme Court has passed sentence (Administration of Justice Act, section 1000(1)).

The Queen has the prerogative of mercy (Constitution, section 24). No rules exist specifying circumstances in which pardon or any other commutation of a death sentence

Digitized by UNOG Library

is possible.

No death sentence has been passed since 1945-46 in connection with the judicial purge after the Second World War. A bill for complete abolition of the death penalty has been tabled in Parliament during its present session 1977/78.

Article 7. Danish law is in harmony with the requirements set forth in this article. Section 244 of the Criminal Code provides protection against offences committed by any person against the integrity of the persons of others. This provision also covers offences against the person of others in the form of medical and scientific experiments performed without the consent of the person concerned. Furthermore. acts committed by physicians, which violate the requirements contained in this article, contravene section 6 (1) of the Practice of Medicine Act according to which a physician shall show care and conscientiousness in the exercise of his profession.

In this connection the Danish Government wishes to bring to the attention of the committee the research work initiated by a Danish medical group to help Amnesty International in its struggle against torture.

The Danish group deals with the medical aspects of torture in a global perspective, young and old medical scientists have made an important contribution to alert world public opinion to the ominious spread of torture and to support action against torture, and not least against doctors who collaborate in these practices.

Torture victims have been examined and specific projects have been started, among them a study of skin changes indicating electrical torture, a study of the effect of falanga (beating on the soles of the feet) and of the endocrinological and neuro-physiological effects of torture. A forensic medical group deals with cases of detainees who allegedly died as a result of torture.

One of the main reasons why the group was formed was recurrent evidence that in many countries doctors collaborate in torture. It is hoped that the Danish medical group, along with the international medical community, can dissuade their colleagues from collaborating in torture. A second and equally pressing reason why members of the medical profession should work for an end to torture is that tortures are now using new sophisticated techniques that often leave few, if any visible traces. In some cases the use of modern techniques is the only means by which to detect and document alleged exposure to torture by skilled interrogators. And such detection is necessary to confirm that torture has been used. Proving that people have been tortured is vital if the practice is to be discontinued.

A medical group of this kind had never been formed before, so no empirical material was available. Its organization and working methods had to be developed without any existing model. Today, three years efter the group started its

Digitized by UNOG Library

work, the experiment can be said to have succeeded inasmuch as the group will serve as a future model for similar medical groups in other countries set up under the auspices of Amnesty International.

....

Article 17.

1. Section 72 of the Danish Constitutional Act lays down the following provision on the inviolability of the dwelling and the secrecy of the mails:

> "72. The dwelling shall be inviolable. House search, seizure and examination of letters and other papers, or any breach of the secrecy that shall be observed in postal, telegraph, and telephone matters, shall not take place except under a judicial order, unless particular exception is warranted by statute."

a. In criminal justice administration detailed rules on house search etc. are found in parts 68 and 69 of the Administration of Justice Act.

b. Also outside the scope of criminal justice administration Danish legislation authorises to some extent the relevant administrative agencies to conduct house searches. The latter may be undertaken without a court order only when that is specifically authorised.

Some years ago the Ministry of Justice asked a committee dealing with general questions of administrative procedures to include in its deliberations the establishment of legal rules concerning the right of administrative authorities to conduct searches and confiscations outside the sphere of criminal justice administration. In the autumn of 1971 the committee issued a provisional statement on some of the aspects involved from which the following is quoted:

> "Implementation of the legal regulation of the behaviour of the citizens may make it necessary to enable the administrative authorities to enter into non-public premises, notably dwellings, offices, factories, et al. The rules in this area are numerous and varied.
>
> The need for such entering is particularly prominent in the following four situations:
>
> 1. When preparing the regulations of real property or public construction projects authorities will frequently need access to private premises to get a proper picture of the layout. Hence Danish laws on roads, urban planning, nature conservation etc. authorise the relevant public agencies to trespass on private property in order to conduct the studies necessary for the planning of public projects.
>
> 2. Danish laws contain a wide variety of rules on the

Digitized by UNOG Library

specifications to be fulfilled by buildings, working premises, ships et al concerning protection against health, fire and other safety-related hazards. Other legislative provisions govern the production plans for a wide range of articles not only to ensure the safety of the employees but also to fulfil any specific quality requirements. Where such rules exist the supervising authorities are usually granted the right to enter the relevant buildings, working premises, manufacturing areas etc.

3. To a limited extent Danish legislation on the mentally ill, retarded persons, and child welfare presupposes that public administrative agencies may cause certain persons to be taken into custody, without such custody serving as a punitive measure. In the execution of these powers entry into the private premises where the persons concerned are to be found may be necessary.

4. To a some extent it will not be possible to bring current laws into execution unless the administration be allowed access to documents which are ordinarily kept by private individuals. In certain instances this situation is strongly reminiscent of the one outlined in (2) above.

This is the case when supervision of the adherence to an official regulation is based on access to accounts and similar documents, for instance in the supervision of commercial and savings banks and the supervision carried out by the Monopolies Control Authority.

Most important, however, are the cases involving supervision of adherence to current legal rules on direct and indirect taxes. ... The customs and tax laws hold wide powers to conduct examinations of documents etc. on the spot."

To the extent that current legislation in this category leaves it to the discretion of the relevant administrative agency to initiate a search it follows, cf. item 2 in the initial report (CCPR/C/1/Add. 4), that these discretionary powers must be exercised with due respect for, inter alia, the provision set out in Article 17 of the International Covenant on Civil and Political Rights.

2. The question whether a specific, administrative or judicial measure is compatible with the provisions of Article 17 of the Covenant on respect for family life, may enter into the foreground especially in connection with decisions made in pursuance of the rules of family law (eg decisions on custody and the right of access), welfare law rules (notably the rules governing the removal of children from their home), and the aliens' legislation.

As indicated under item 2 in the initial report (CCPR/C/1/Add.4) discretionary powers of any authority, in pursuance

Digitized by UNOG Library

of the legislation cited and similar legislation, must be exercised with due respect for, inter alia, the provision set out in Article 17 of the International Covenant on Civil and Political Rights.

3. Rules governing protection against unlawful attacks on a person's honour and reputation are contained in the Criminal Code. The following provisions are particularly relevant:

264.d. Any person who unlawfully transmits information or pictures appertaining to the private affairs of others or such pictures of another person which should obviously be withheld from the public, shall be liable to a fine, simple detention or imprisonment for any term not exceeding six months. The same penalty shall apply where the information or picture concerns a deceased person.

267.(1) Any person who violates the personal honour of another by offensive words or acts or by making or spreading accusations of an act likely to disparage him in the esteem of his fellow countrymen shall be liable to a fine or to simple detention.

(2) If the offence has been made against any of the persons mentioned in Section 119, subsection 2, of this Act, in connection with the execution of their office or function, in circumstances other than those covered by the provisions of Section 121 of this Act, this shall be taken into account as an aggravating circumstance in fixing the penalty and, in such case, the punishment may be increased to imprisonment for any term not exceeding six months.

(3) In fixing the penalty it shall be considered as an aggravating circumstance if the insult was made in a printed document or in any other way likely to give it a wider circulation, or in such places or at such times as greatly to aggravate the offensive character of the act.

267.a. If any person in the manner indicated in Section 267, subsection 3, of this Act has made a statement containing an untrue allegation against another person for acts which, if true, would make the latter unworthy to hold public office, he shall not be heard with the argument that, for the determination of his guilt or for the assessment of the penalty, standards, as they are generally accepted in society, should not apply.

268. If an allegation has been maliciously made or disseminated, or if the author has had no reasonable ground to regard it as true, he shall be guilty of slander and liable to simple detention or to imprisonment for any term not exceeding two years. If the

Digitized by UNOG Library

allegation has not been made or disseminated publicly, the punishment may, in extenuating circumstances be reduced to a fine.

269.(1) An allegation shall not be punishable if its thruth has been established or if the author of the allegation in good faith has been under the obligation to speak or has acted in justified protection of obvious public interest or of the personal interests of himself or others.

(2) Punishment may be remitted where evidence is produced affording grounds for regarding the allegation as true.

Article 18.

1. Part VII of the Danish Constitutional Act reads as follows on the subject of religious freedoms:

§ 66. The constitution of the established church shall be laid down by statute.

§ 67. Citizens shall be at liberty to form congregations for the worship of God in a manner according with their convictions, provided that nothing contrary to good morals or public order shall be taught or done.

§ 68. No one shall be liable to make personal contributions to any denominations other than the one to which he adheres.

§ 69. Rules for religious bodies dissenting from the established church shall be laid down by statute.

§ 70. No person shall by reason of his creed or descent be deprived of access to the full enjoyment of civic and political rights nor shall he escape compliance with any common civic duty for such reasons.

The provisions of Sections 67, 68 and 70 of the Constitutional Act are binding on the legislative power.

Pursuant to Section 4 of the Constitutional Act the Evangelical Lutheran Church shall be the established church of Denmark, and as such shall be supported by the state.

The general rules governing membership of the established church are laid down in Section 5 of the Parochial Church Councils Act, promulgation order no. 343, of 26 June 1970, which reads:

"1. Members of the established church are:

i. persons baptised in the established church;

ii. persons baptised in an Evangelical Lutheran community who have subsequently joined a

Digitized by UNOG Library

congregation within the established church. Persons baptised outside Denmark will be admitted upon taking up residence in Denmark unless they have indicated, by the appropriate procedure, their wish not to join the established church.

iii. others baptised with the Christian baptism who either, at the designation of their custodian(s) have been raised in the faith of the established church or later in life have joined an established church congregation personally.

2. Detailed rules concerning admittance to or withdrawal from the established church ar given by Royal Ordinance.

3. The membership shall discontinue when a member:

i. withdraws from the established church following a written petition filed in the manner prescribed by Royal Ordinance;

ii. joins a religious community outside the order of the established church, or otherwise, eg by submitting to rebaptism, dissociates himself from the established church.

4. Children under 15 years of age shall be admitted to and withdrawn from the established church at the request of their custodian. For children between 15 and 18 years of age, the child's own request shall be accompanied by a declaration of consent from the child's custodian."

By contrast, Denmark has no general legal rules on the affairs of other religious communities, inasmuch as the legislation envisaged in Section 69 of the Constitutional Act has never been implemented.

The special legislation does have a few provisions which in certain particular areas authorise exemption, on grounds of conscience, from general legal obligations. Cases in point are the special law on exemption from mandatory military service; Section 5 of the Elementary School Act, Act No. 313 of 27 June 1975, which reads:

"Section 5. (1). The Evangelical-Lutheran christianity of the Danish National Church shall constitute the principal sphere of knowledge of the instruction offered in religious knowledge.

(2). A child shall be excused from receiving instruction in religious knowledge when the party having custody of the child so requests and declares in writing to the principal of the school that he will himself

Digitized by UNOG Library

provide the child with such instruction. A child having completed its fifteenth year shall be excused only with its own consent."

Mention should also be made of subsections 2 and 3 of Section 10 of the Abortion Act No. 350 of 13 June 1973 (excusing physicians and nurses from participating in abortive treatment). However, these and other provisions may often go further than prescribed by the convention.

Article 19.

1. The Danish Constitutional Act has in Section 77 a provision on the safeguarding of the freedom of expression, see also under Article 18 above concerning Section 67 of the Constitutional Act. Section 77 reads: -

"77. Any person shall be at liberty to publish his ideas in print, in writing, and in speech, subject to his being held responsible in a court of law. Censorship and other preventive measures shall never again be introduced."

a. Section 77 of the Constitutional Act is generally held to safeguard only freedom of expression in the formal sense, ie to prohibit implementation of any schemes according to which the publication of opinions or certain opinions as such is formally prohibited and hence only legal where the prohibition is dispensed with by means of a permission. This ban on "censorship" is binding on the legislature.

b. Section 77 of the Constitutional Act deals solely with the right to publish opinions. Not covered is the exchange of private communications. As for interference therewith, please compare the comments under Article 17 above and (c) below.

c. Section 77 of the Constitutional Act is not presumed to be an obstruction to the establishment of censorship on persons who have been taken into custody under the administration of criminal justice, and in this area rules exist which to a limited extent authorise prison authorities to open and read letters addressed to or to be mailed from prison inmates. However, letters to and from the European Human Rights Commission and various national authorities such as the courts of law, the ombudsman of the Folketing, and the Minister for Justice shall not be opened, while an inmate of foreign nationality enjoys the full right of unobstructed correspondence with the diplomatic or consular representatives of his country.

d. Section 77 of the Constitutional Act is not presumed to be an obstruction to theatre and film censorship. The former theatre censorship was, however, rescinded in 1954 and under the current Film Censorship Act No. 135 of 29 March, 1969, only films shown publicly to children

Digitized by UNOG Library

below 16 years of age shall require approval before being shown to children below 12 and 16 years respectively.

e. It is doubtful whether the constitutional ban on censorship shall apply also to writings printed abroad. However, current legislation does not in this field either authorise any right to undertake censorship.

2. The prevailing opinion is that Section 77 of the Constitutional Act does not prohibit the establishment of provisions which impose subsequent liability for the publication of certain sayings by virtue of their substance.

The following provisions from the Danish Criminal Code are of general interest:

100. (1) Any person who by public statements incites to enemy action against the Danish state or who brings about an evident danger of such action shall be liable to imprisonment for any term not exceeding six years.

(2) Any person who by public statements incites to intervention by any foreign power in the affairs of the Danish state or who brings about an evident danger of such intervention shall be liable to simple detention or to imprisonment for any term not exceeding one year or, in extenuating circumstances, to a fine.

109. (1) Any person who discloses or imparts any information on secret negotiations, deliberations or resolutions of the state in affairs involving the safety of the state or its rights in relations to foreign states, or which have reference to substantial economic interests of public character in relation to foreign countries, shall be liable to imprisonment for any term not exceeding twelve years.

(2) If any of these acts has been committed through negligence, the penalty shall be simple detention or imprisonment for any term not exceeding three years or, in the case of extenuating circumstances, a fine.

110.e. Any person who by public statement insults a foreign nation, foreign state, its flag or other recognised national emblem, or the flag of the United Nations or the Council of Europe shall be liable to a fine, simple detention or, in the case of aggravating circumstances, imprisonment for any term not exceeding two years.

136. (1) Any person who, without thereby having incurred a higher penalty, publicly incites others to an offence shall be liable to simple detention or to imprisonment for any term not exceeding four years or, in the case of extenuating circumstances, to a fine.

140. Any person who exposes to ridicule or insults

Digitized by UNOG Library

the dogmas or worship of any lawfully existing religious community in this country shall be liable to simple detention or, in extenuating circumstances, to a fine. Prosecution shall take place only by the order of the Chief Public Prosecutor.

266.b. Any person who, publicly or with intent to propagate them in a wider circle, makes statements or any other communication by which a group of persons is threatened, insulted or exposed to indignities on grounds of race, colour, national extraction, ethnic origin, or religion shall be liable to a fine, simple detention or imprisonment for any term not exceeding two years.

264.b. Any person who, while exercising or having exercised a public office or function or who, while carrying or having carried on any occupation, by virtue of an official authorisation or approval as well as any assistants of such persons, reveals secrets appertaining to the private affairs of others and which have come to his knowledge in the execution of his work, except where he has been under obligation to speak/or has acted in lawful protection of obvious public interest or of the personal interests of himself or others, shall be liable to a fine, simple detention or imprisonment for any term not exceeding six months. The same penalty shall apply to any person exploiting such knowledge without authorisation.

With regard to breach of private peace and personal honour please refer to the provisions quoted under Article 17 above.

152. (1) If any person exercising a public office or function reveals what he has learned in the official course of his duties as a secret or what the law or any other relevant regulation declares to be secret, he shall be liable to a fine or simple detention or, in aggravating circumstances, to imprisonment for any term not exceeding one year. If it is done in order to obtain an unlawful profit for himself or others, the penalty may be increased to imprisonment for three years.

(2) The above provisions shall apply in like manner to any person who, after he has resigned from the office in question, commits a punishable act in respect of official secrets which have come to his knowledge by virtue of the office concerned.

(3) The provisions of subsections 1 and 2 above shall apply in like manner to persons employed in or by telegraph or telephone services recognised by the State.

(4) The penalty set out in subsection 1 above shall apply to any person who without permission from the relevant public authority transmits or unlawfully exploits information deriving from public authorities, and which he has received or acquired while working for an enterprise engaged in the mechanical processing or storing of data for public authorities.

Digitized by UNOG Library

(5) Any person who, without being a party to the violation, acquires or unlawfully exploits data that have become available through a violation of the provisions of subsections 1-4 above shall be liable to punishment as set out in subsection 1 above.

129. Any person who, without being empowered to do so, discloses public information concering the proceedings of the elections or plebiscites dealt with in Section 116 of this Act or concerning negotiations of a confidential nature pursued by or in public councils or authorities shall be liable to a fine or to simple detention for any term not exceeding three months or, in aggravating circumstances, to imprisonment for the same term. The same penalty shall apply to any person who, without being empowered to do so, gives public information concerning negotiations carried on by or in any commission or committee set up by the government, provided that the government or the commission or committee concerned has published its decision that the negotiations shall be confidential.

129.a.(1) Any person who publishes versions which he knows to be untrue or false quotations of communications on facts given in court sittings or at meetings of the Diet or of any local or public council or authority shall be liable to a fine or to simple detention or to imprisonment for any term not exceeding two years.

(2) The same penalty shall apply to any person who, conscious of the untruthfulness of the accusation, by publicly imputing to the government or to any other public authority an act which it has not committed, prejudices the interests of the State in relation to foreign countries.

1017*(1) Any public rendering of court hearings must be objective and faithful.

(2) A fine or simple detention shall be the punishment for any person who, orally or in writing, with intent to propagate it in a wider circle, wilfully or by gross negligence,

i. provides essentially wrong information on a criminal case that has not yet been definitively decided or dismissed;

ii. obstructs the fact-finding efforts of the case;

iii. prior to the handing-down of a final sentence in a criminal case, makes statements which may influence the judges, lay assessors or members or the jury unduly.

* of the Administration of Justice Act.

Digitized by UNOG Library

In order to prevent the perpetration of such or similar, crimes or offences the regular courts of law may, according to circumstances, issue an injunction to prevent publication or order seizure and confiscation in pursuance of the applicable rules:

Injunction is a measure by which the court may order a person to abstain from undertaking unlawful acts, contemplated by the defendant, which, if carried out, would violate the rights of the plaintiff. Injunction may be ordered as a preliminary and as a perpetual measure.

Seizure may be ordered by the court if necessary to secure that the goods in question can be produced in evidence in criminal proceedings or as a preliminary to confiscation.

Confiscation is an order by which the treasury takes possession of goods which have been used - or have been meant to be used - in committing a criminal offence.

A preliminary injunction may be ordered even if the plaintiff cannot at that stage prove to the court, that the action complained of is or would be in violation of his rights. In such cases, however, the plaintiff must provide security for compensation to the defendant, in case the preliminary injunction is found unjustified. The issuance of a preliminary injunction may be prevented by the defendant by providing security for compensation to the plaintiff in case the acts complained of are actually carried out.

If a preliminary injunction is ordered the plaintiff must within a week bring an action against the defendant seeking a judgement as to whether the act contemplated by the defendant would be in violation of the plaintiff's rights, and whether the defendant should be restrained from carrying out the acts contemplated. In this action it must be specifically pleaded, that the court uphold the preliminary injunction. If a case between the parties on the substance of the matter is already pending before a court a special pleading or procedure as to whether the preliminary injunction should be upheld must be introduced by the plaintiff, likewise within one week. The preliminary injunction ceases to be valid if the action or proceeding mentioned above is not instituted within the time-limit of one week.

Objects seized in order to secure that they be used in evidence are returned, when there is no longer any use for them. If an order of seizure has been issued as a preliminary to confiscation, the goods seized are likewise returned if the court declines to issue an order of confiscation.

Wilful violation of an injunction - preliminary as well

Digitized by UNOG Library

as perpetual - is punishable under the law and may give rise to compensation. If necessary, the police shall as a general rule on request assist in maintaining the restraint.

If a preliminary injunction is found unjustified, the plaintiff may be held liable to pay damages to the defendant according to the circumstances.

The situation is the same as regards seizure. If the defendant is acquitted, or if the criminal proceedings against him are discontinued, the court may order that the defendant's loss in connection with previous orders of seizure be compensated.

3. The Theatres Act No. 241 of 4 June 1970, and the Films and Cinemas Act No. 236 of 7 June 1972, abrogated the former licence system. Instead a scheme was introduced whereby only a police permit shall be required for public theatre performances and public film showings. The applicant shall be entitled to receive such permit when certain basic, objectively ascertainable conditions (notably full legal capacity, residence in Denmark, solvency) have been fulfilled.

In pursuance of the Radio and Television Act No. 421 of 15 June 1973, Radio Denmark, a government institution, shall have the sole right to trace, by means of radio equipment, sound and picture programmes intended for reception by the general public. Proposed amendments are currently being considered by Parliament.

4. Act No. 280 of 10 June 1970 on Access of the Public to Documents in Administration Files is also of pertinence to the right to seek information. Extracts of the Act are reprinted on page 79-80 of the 1971 United Nations Yearbook on Human Rights.

Article 20. With regard to the first paragraph reference is made to the Danish instrument of ratification from which it appears that Denmark has entered a reservation in respect of this paragraph.

As to the second paragraph reference is made to the information submitted under item 3 in the initial report (Doc. CCPR/C/1/Add.4).

Article 21.

1. In Sections 79 and 80 of the Danish Constitutional Act we find the following provisions on freedom of assembly (see also what is noted above under Article 18 Section 67 of the Constitutional Act):

"79. Citizens shall, without previous permission, be at liberty to assemble unarmed. The police shall be

Digitized by UNOG Library

entitled to be present at public meetings. Open-air meetings may be prohibited when it is feared that they may constitute a danger to the public peace.

80. In the event of riots the armed forces may not take action, unless attacked, until after the crowd has three times been called upon to disperse in the name of the King and the law and such warning has gone unheeded".

The provisions of Sections 79 and 80 are supplemented in particular by the following provisions from the police regulations:

Section 12 of the Act of 11 February 1863, concerning re-structuring of the Copenhagen police:

"In the event of riots the police shall forcibly separate the crowd, not, however, until after the crowd has three times been called upon to disperse in the name of the King and the law and the call has gone unheeded. At public, open-air gatherings the police shall assist in maintaining order. In the event of disorder developing into violent behaviour the police may request the adjournment of the gathering; failure to comply with this request may prompt the police to adjourn the gathering and then intervene as in the case of a riot. At other public gatherings the police may, at the request of the person in charge of the gathering contribute to the maintenance of order and at his request, or when disorder or fighting erupt arrest or forcibly remove the disturbers of the peace".

Section 10 of Act 21 of 4 February 1871, lays down the rules for the police outside Copenhagen:

"In the event of riots the police shall forcibly separate the crowd, not however, until after the crowd has three times been called upon to disperse in the name of the King and the law and the call has gone unheeded. - At public, open-air gatherings the police shall assist in maintaining order. In the event of disorder developing into violent behaviour the police may request the adjournment of the gathering; failure to comply with this request may prompt the police to adjourn the gathering and then intervene as in the case of a riot. - At other public gatherings the police may, at the request of the person in charge of the gathering, contribute to the maintenance of order and at his request, or when disorder or fighting erupts, arrest or forcibly remove the disturbers of the peace."

Interesting also are the following provisions contained in the regular Police Regulations (No. 203 of 1 September 1968):

"8. (1) Processions and meetings on roads must be

Digitized by UNOG Library

registered by personal appearance at the police station not less than 24 hours prior to the time for which they have been set. The sponsor or his agent shall undertake the registration which must specify the hour, the route and the meeting place. The police may order a change if warranted by traffic considerations. Police instructions concerning maintenance of order must be adhered to.

(2) The provisions of subsection (1) above do not apply to funeral processions.

9. Loudspeaker cars operating on or next to roads as well as the use of loudspeakers from an airplane are allowed only with permission from the police. The police is also empowered to prohibit the use of loudspeakers, gramophones, musical instruments etc. in open air or behind open windows and doors provided such use is presumed to cause considerable inconvenience to neighbours or passers-by."

2. Pursuant to Section 85 of the Constitutional Act the provisions of Section 79 shall be applied to the defence powers only with the modifications laid down in the precepts of military law.

As regards the freedom of assembly, military personnel in uniform shall not, for instance, be allowed to participate in processions or meetings the purpose of which is to protest against service conditions, the defence in general or the defence policy of Denmark.

Aticle 22.

1. The Danish Constitutional Act has the following provision on the freedom of association.

"78 (1) Citizens shall, without previous permission be free to form associations for any lawful purpose.

(2) Associations employing violence, or aiming at the attainment of their object by violence, by instigation to violence, or by similar punishable influence on persons holding other views, shall be dissolved by court judgement.

(3) No association shall be dissolved by any government measure; but an association may be temporarily prohibited, provided that immediate proceedings be taken for its dissolution.

(4) Cases relating to the dissolution of political associations may, without special permission, be brought before the Supreme Court of Justice of the Realm.

(5) The legal effects of the dissolution shall be determined by statute."

There are no laws designed for the general regulation of the legal matters of associations. In particular there

Digitized by UNOG Library

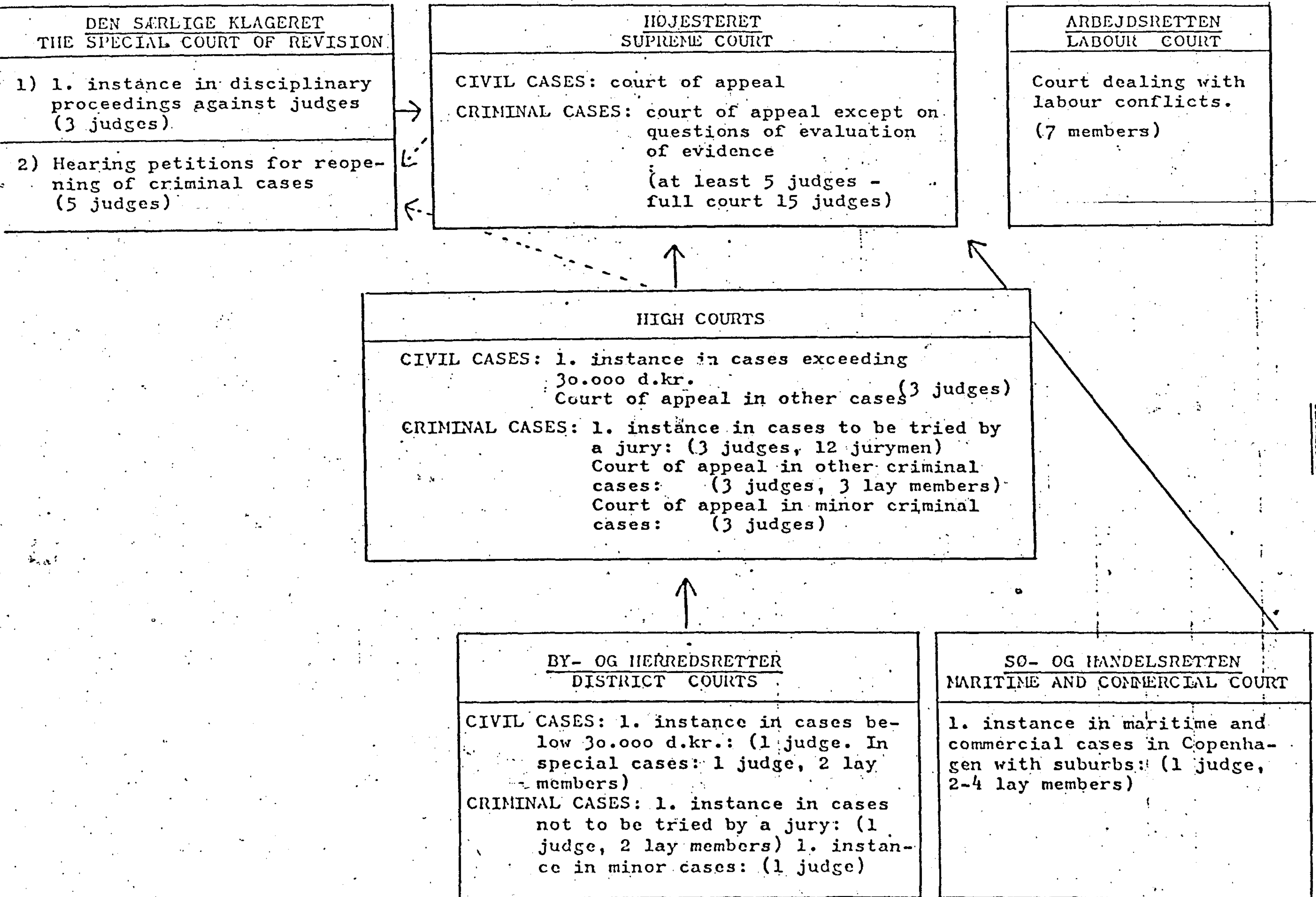
are no legal regulations which prohibit specific persons or groups of persons from forming trade unions or joining them as members.

2. Pursuant to Section 85 of the Constitutional Act the provisions of Section 78 shall be applied to the defence powers only with the modifications laid down in the precepts of military law.

On the other hand, Section 29 of the Military Penal Code imposes only one limitation on the freedom of association, namely that in extraordinary situations the Minister for Defence may prohibit persons belonging to the military defence from participating in political associations or assemblies. There are thus no limitations on the right of military personnel to join trade organisations.

Digitized by UNOG Library

ANNEX 1



Digitized by UNOG Library

Explanatory note to the organigramme on the Danish judicial system

I: Information on the different courts

A: District Courts

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 ("skifteforvalter"), 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 84 court-districts. In comparison the total number of local government areas (borroughs) will as of 1 April 1970, be 277. Thus most court-districts cover more than one borrough.

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 organization is found in Aarhus, Odense and Aalborg.

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 (divisions?).

b. Civil cases are as a general rule heard by the 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 organizations. (In the

Digitized by UNOG Library

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 organizations 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 local Chief of Police, when no lay judges take part.

3. Legal remedies

Judgments rendered by the District Court, whether in civil or criminal cases, may be appealed 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

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 30,000 D.kr., and most actions for declaratory judgments against administrative agencies), and in those criminal cases which under Danish law are tried by jury (prosecution in regard to crimes which under the law may be punished with imprisonment for more than 8 years, e.g. intentional homicide, rape, espionage).

2. Composition of the court

a. There are two High Courts, the High Court for the Eastern Region ("Østre 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. "Østre Landsret" is made up of a

Digitized by UNOG Library

Chief Justice and 35 other judges, "Vestre Landsret" is made up of a Chief Justice and 19 other judges. Each of the High Courts are divided into a number of chambers (divisions?) consisting of 3 judges each.

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~~ Child and Youth Welfare, e.g. decisions on removal of children from their homes, may be brought before the High Court. In the hearing of these cases, the High Court is composed of three judges and two assessors, one being an expert in child welfare and the other in children's 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 rule so. The assessors are chosen from a list drawn up by the Chief Justice of the High Court after consultation with the appropriate organizations.

c. Criminal cases brought before the High Court as a court of first instance are tried by three judges and a jury of 12.

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. Judgments in civil cases heard by the High Court as a court of first instance may be appealed to the Supreme Court; judgments in cases heard on appeal may only be appealed to the Supreme Court under exceptional circumstances by special permission of the Minister of Justice.

b. Appeal against judgments in ~~criminal cases may~~ be lodged with the Supreme Court except as regards questions of evaluation of evidence; in cases heard by the High Court on appeal, this remedy only lies in exceptional cases by permission of the Minister of Justice.

C: Maritime and Commercial Court

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 or commercial affairs is regarded as essential. In cases of

Digitized by UNOG Library

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 organizations.

Cases are heard by chambers composed of the Chief Justice or the Deputy Chief Justice and 2-4 experts.

3. Legal remedies

Judgments rendered by the Maritime and Commercial Court (of Copenhagen) may be appealed to the Supreme Court.

D: The Supreme Court

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 14 other judges.

At least 5 judges must sit in a case. The court usually sits in two chambers (divisions?) each comprising at least 5 judges. In cases involving issues of major importance, however, more than five judges will usually sit, and in outstandingly important cases the court will sit as a full court.

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

3. Legal remedies

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.

Digitized by UNOG Library

E: The Special Court of Revision

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 can only be issued by this court.

b. The court has also jurisdiction to hear petitions for re-opening of criminal cases, e.g. when new evidence has been found.

2. Composition of the court

When exercising its disciplinary powers the court is composed of 1 Supreme Court judge, 1 High Court judge, and 1 District Court judge. When hearing petitions for re-opening of criminal cases the court is supplemented by an attorney and a professor of law.

Members of the court are appointed for 10 years at a time.

3. Legal remedies

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

F: Courts of Arbitration

Outside the framework of the ordinary courts, the law has established special courts of arbitration to hear disputes in certain special fields, e.g. trade in domestic animals, legal status of apprentices, labour law, more particularly contravention of agreements concluded between the industrial organizations.

As a general rule, a court of arbitration is composed of a professional judge and assessors, who are experts in the particular field.

Normally, there lies no appeal against decisions rendered by a court of arbitration.

In the organigramme the Labour Court is depicted as an example of these courts of arbitration.

II: Information on the office of the Attorney of State

The Public Prosecution (anklagemyndigheden) comes under the Ministry of Justice.

Digitized by UNOG Library

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. Besides 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 taking 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.

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

Digitized by UNOG Library

ANNEX II

THE OMBUDSMAN ACT

(Act No. 203 of 11 June 1954 as subsequently amended, most recently by Act No. 258 of 9 June 1971)

1\. (1) After every general election and when vacancy occurs the Folketing shall elect an Ombudsman to supervise, on its behalf, civil and military central government administration and local government administration. The jurisdiction of the Ombudsman shall not extend to the functions of judges, chief administrative officers of the courts of justice, the head of the Probate Division of the Copenhagen City Court, clerks of the Supreme Court, and assistant judges.

(2) Upon a general election, the Ombudsman shall continue in office until the new Folketing has elected an Ombudsman as provided in subsection (1) above, and, if he is not re-elected, until the new Ombudsman has taken office. The term of office of the outgoing Ombudsman shall not, except with the consent of the Folketing, exceed six months from the date of the general election.

(3) In the event of the death of the Ombudsman, the Ombudsman Committee of the Folketing shall determine who shall carry out the functions of Ombudsman until the Folketing has elected a new Ombudsman.

(4) Should the Ombudsman cease to enjoy the confidence of the Folketing, it may dismiss him.

2\. The Ombudsman, who may not be a member of the Folketing, shall be a law graduate.

3\. The Folketing shall lay down general rules governing the activities of the Ombudsman. Subject to these rules, the Ombudsman shall be independent of the Folketing in the discharge of his functions.

4\. (1) The jurisdiction of the Ombudsman shall extend to ministers, civil servants and all other persons in government service except as provided in section 1, subsection (1).

(2) Persons in local government service shall likewise fall within the jurisdiction of the Ombudsman in so far as regards matters in which recourse to a central government authority is provided for. The activities of local government councils acting as a body shall not fall within the jurisdiction of the Ombudsman except as provided in section 6, subsection (5).

(3) In the exercise of his powers the Ombudsman shall take account of the special conditions under which local governments function.

Digitized by UNOG Library

5. The Ombudsman shall keep himself informed as to whether the persons referred to in section 4 make themselves guilty of errors or neglect in the performances of their duties.

6. (1) Any person may lodge a complaint with the Ombudsman against any of the persons referred to in section 4. Any person deprived of his personal liberty shall be entitled to address written communications to the Ombudsman in sealed envelopes.

(2) A complainant shall state his name and lodge his complaint within twelve months after the commission of the act complained of.

(3) Complaints against decisions which may be set aside by a superior administrative authority cannot be lodged with the Ombudsman until the superior authority has taken a decision in the matter. In that event the time-limit referred to in subsection (2) of this section shall be reckoned from the date of that authority's decision.

(4) The Ombudsman shall determine whether a complaint offers sufficient grounds for investigation.

(5) The Ombudsman may take up a matter for investigation on his own initiative. In that event the restrictions referred to in section 4, subsection (2) shall not apply where violation of essential legal interests is postulated.

7. (1) The persons referred to in section 4 shall be under obligation to furnish the Ombudsman with such information and to produce such documents and records as he may demand ex officio.

(2) Demands for information made by the Ombudsman in pursuance of subsection (1) of this section shall be subject to restrictions corresponding to those laid down in section 169, subsections (1) and (3), section 170, subsection (1), the principal rule of section 170, subsection (4), and section 749 of the Administration of Justice Act.

(3) If the Ombudsman wants to take action on a complaint against any of the persons referred to in section 4, the complaint shall, except where absolutely incompatible with the investigation of the matter, be notified to the person complained of at the earliest opportunity. If the person complained of is a civil servant he may always demand that the matter be dealt with under the provisions of section 17, cf. section 18, of the Civil Servants (Salaries and Pensions) Act. If he is a local government official he may, if the by-laws of the local government concerned provide for disciplinary action, demand that the matter be dealt with under the provisions of such by-laws.

(4) The Ombudsman may subpoena persons to give evidence in court on any matter of importance to his investigations. Such procedure shall be subject to the rules governing examination of witnesses for purposes of

Digitized by UNOG Library

investigation, cf. Part 74 of the Administration of Justice Act. The hearings shall not be held in open court. The person complained of shall be entitled to attend such examinations of witnesses and to bring a counsel. The rules in force at any given time with respect to payment of the costs of counsel, etc. in cases of disciplinary prosecution of civil servants shall apply by analogy.

8. The Ombudsman shall observe secrecy in any matter coming to his knowledge in the performance of his duty, provided that secrecy is necessary *ipso facto*. The obligation of the Ombudsman to observe secrecy shall not lapse on his retirement.

9. (1) The Ombudsman may direct the Public Prosecutor to institute a preliminary investigation or bring a charge before a court of justice for misconduct in public service or office, subject to the provisions of sections 16 and 60 of the Constitution of 5 June 1953 (The Court of the Realm).

(2) The Ombudsman may direct the appropriate central government administrative authority to institute disciplinary proceedings. Where the by-laws of a local government provide for disciplinary proceedings, he may direct the appropriate local government authority to institute such proceedings.

(3) The Ombudsman may always state his own views of a case to the person complained of.

10. (1) Should the Ombudsman learn of major mistakes or derelictions on the part of any of the persons referred to in section 4, he shall report the matter to the Folketing and the responsible minister. In the case of mistakes or derelictions on the part of any of the persons referred to in section 4, subsection (2), he shall report the matter also to the local government concerned.

(2) The Ombudsman shall submit an annual report on his work to the Folketing. The report shall be printed and published.

(3) Where the Ombudsman reports a matter to the Folketing, a minister or a local government or mentions a case in his annual report, he shall state what the person concerned pleaded in defence.

11. If any deficiencies in existing laws or administrative regulations come to the attention of the Ombudsman he shall notify the Folketing and the responsible Minister thereof. In the case of deficiencies of by-laws of local governments he shall also notify the local government council concerned.

12. (1) The Ombudsman shall receive remuneration at the same rate as judges of the Supreme Court. In addition, he may be granted a personal allowance.

Digitized by UNOG Library

He shall be entitled to "waiting money" */ and to a pension under provisions corresponding to those of sections 3-7 of the Remuneration and Pension of Ministers Act.

(2) The Ombudsman may not hold any office in public or private enterprises, undertakings or institutions except with the consent of a committee authorized by the Folketing to decide on that question.

13. (1) Giving six months' notice, the Ombudsman may tender his resignation, effective from the end of a month.

(2) The Ombudsman shall retire at the end of the month in which he attains the age of 70.

14. (1) If the Ombudsman is discharged without notice, or if following a general election he has to retire because he is not re-elected, he shall retain his salary for three months from the end of the month in which he retires. If he dies before the expiry of that period, any salary outstanding at the time of his death shall be payable to his spouse, or if he leaves no spouse, to any children of his being entitled to children's pension.

(2) For the duration of the period of entitlement to salary, compensation or pension shall not be paid."

(3) Section 3, subsection (2) of the Remuneration and Pension of Ministers Act shall apply by analogy to salary payable under subsection (1) of this section.

15. The Ombudsman shall engage and dismiss his own staff. The number, salaries and pensions of his staff shall be fixed in accordance with the Rules of Procedure of the Folketing. The expenditure incident to the office of Ombudsman shall be charged to the budget of the Folketing.

The Ombudsman Act entered into force on 1 November 1954.

*/ Compensation payable to government officials temporarily out of office.

Digitized by UNOG Library

ANNEX III

REVIEW OF THE DUTIES AND POWERS OF THE OMBUDSMAN

The Ombudsman, who may not be a member of the Folketing or without special permission hold other public or private office, is appointed after general elections by the Folketing, which may dismiss him should he cease to enjoy its confidence. In exercising his duties, however, he is independent of the Folketing, which may neither forbid nor order him to handle any question. At the same time, the Folketing issues instructions giving general rules for his activities. He appoints and discharges his own staff.

The Ombudsman's terms of reference were confined initially to ministers, civil servants, and all others in central 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 on his own initiative, when a violation of essential judicial interests would be postulated.

The Ombudsman's terms of reference do not extend to judges and personnel of law courts, the work of Parliament and its committees, or officials of the National Church in matters directly or indirectly relating to doctrine or gospel.

The Act empowers the Ombudsman to supervise persons within his terms of reference in order to prevent faults of commission or omission in the course of their work. His duties are elaborated in his instructions, which direct him to see that no one in public service pursues unlawful aims, makes arbitrary or unjust decisions, or is guilty in any way of error or neglect. In short, the Ombudsman not only exercises legal supervision over the administration, he is charged with preventing arbitrary and unreasonable dispositions.

A vital feature of the system is that anyone, not necessarily an interested party, may complain to the Ombudsman. He is not, however, an appeals tribunal, obliged to deal with every complaint, but exercises his own discretion as to whether a complaint warrants investigation. Complaints about decisions which may be alterable by a higher administrative authority cannot be referred to the Ombudsman until such authority has made its decision. Any complaint must be lodged within a year of the action complained of, unless it has been referred to a higher administrative authority, when the time limit is reckoned from the date of that authority's decision. Matters which the Ombudsman has personally sponsored are not subject to a time limit. A complaint may not be anonymous and must as far as possible be made in writing. Where the Ombudsman considers preferring a complaint under his terms of reference, the complaint must, in the absence of vital reasons to the contrary, be notified to the person complained of at the earliest opportunity.

Digitized by UNOG Library

In order that the Ombudsman may delve thoroughly into matters which he is examining, he has been invested with far-reaching powers. In the first place, he has powers to compel any person under his sphere of responsibility to furnish him, as for a court of law, with any information, documents, or records which he may require for the purpose of his investigation. He may also subpoena witnesses to give evidence in court on matters of importance to his investigations. Additionally, he is empowered to inspect government service establishments, and, when investigating local government matters, the relevant local government establishments.

If in the light of his investigations the Ombudsman finds there is reason to institute criminal proceedings for an offence committed in the course of public service or office, he may direct the Public Prosecutor to make a preliminary investigation or prefer a charge. Where a minister, or former minister, is to be called upon to account for his conduct of office before a civil or penal court, the Ombudsman must first recommend to the Folketing that this course be taken.

In the event of official misdemeanours which seem to the Ombudsman to warrant disciplinary action, he may direct the government authority concerned to institute such action, and may likewise direct a local government authority, where there are local government regulations which provide for disciplinary proceedings against local officials.

The Ombudsman may always state his own views of a case to the person complained of, and it is under this provision that he pronounces criticism and/or makes recommendations to the relevant authority.

Where a complainant intends to institute proceedings against an authority covered by the Ombudsman's sphere of reference and the Ombudsman considers there is reasonable ground for proceedings, he may recommend free legal aid, subject to general judicial conditions. The same applies in the case of intended proceedings against a person engaged, or who was formerly engaged, in public service.

Should the Ombudsman learn of major mistakes or derelictions on the part of some person covered by his terms of reference, he must report the matter to Parliament and the responsible minister, as well as the local government council where relevant. Any deficiencies in current laws or administrative regulations which may come to the Ombudsman's attention must be notified by him to Parliament and the responsible minister, and he may make recommendations which he thinks would be beneficial to the promotion of law and order or improvement of the administration at the same time. Finally, the Ombudsman presents a report on his work to the Folketing each September. The report, which is printed and published, gives an account of the principal cases.

Digitized by UNOG Library