

# The Danish Bar and Law Society

## 1 Law Practicing in Denmark

### 1.1 *History and Views on Law Practicing in Denmark*

#### 1.1.1 The development of the societal status of law practicing in Denmark

In Denmark the Profession of law practicing goes way back to the early 17<sup>th</sup> century. At that time persons who practiced as lawyers were called procurators, and unlike today the profession within which the *procurators* operated were neither found to be of importance to society nor to be carrying out a particularly prestigious task.

On the contrary, procurators were believed to be cantankerous and aggressive and doing nothing else besides contributing to superfluous legal proceedings taking place in court. Therefore they were prohibited to perform their profession outside the town and cities according to a statute from King Christian the IV's reign in 1668. Another major difference between now and then was the fact that the procurators were not amongst the well educated.

The shifts towards a growing respect of the profession and the acknowledgment of its important role for society as such happened during the 18<sup>th</sup> and 19<sup>th</sup> century. During these years the general perception of the profession changed, and even though a specific reference to the branch of legal professions is not specifically mentioned in the Danish Constitution of 1849, the existence of such branch comprising independent practicing lawyers, had for many years been found to be a prerequisite for the Danish independent and impartial judiciary.

Thus, the practicing of law was no longer just a trade. It was much more than that. It was – and still is- an integral part of Denmark's Judicial and legal system. Accordingly, access to independent and competent legal advice is now regarded to be paramount in order to ensure justice - the cornerstone of every democratic society.

## **1.2 Access to the Profession**

### **1.2.1 Different types of lawyers**

The rules governing practicing lawyers are laid down in the Administration of Justice Act, chapter 12- 15. Contrary the practice to distinct between barristers and solicitors or other practicing lawyers in many countries, these distinctions are not to be found in the Danish legal system. Therefore there is only one title for a practicing lawyer in Denmark and that is *advocate*.

Currently there are approximately 4000 practicing lawyers in Denmark.

### **1.2.2 Admission to the Bar**

To obtain the title of *advocate* and corollary be admitted to the Bar, three basic requirements must be met. The first requirement is that; 1) an applicant has to obtain the Danish law degree *Cand. Jur.* This is achieved when the applicant has successfully completed the prescribed Bachelor degree, which is estimated to be of three years duration, as well as passed the master degree, which is a postgraduate study of two years. The second requirement is that; 2) an applicant needs to have performed at least three years of practical legal work, including the practical handling of court cases, either through an authorized article clerkship at a practicing lawyer, or by working in the courts or in the prosecution.

However, if a person obtains the title of lawyer without having worked in an office of a practicing lawyer, he/she is not allowed to practice immediately as sole practitioners. This may only happen after one years of employment at another lawyer.

Due to the different types of law firms, big or small and the different areas of occupation etc., the background information and the actual experience that these article clerks gain may vary widely from one law firm to another. Thirdly; 3) It is mandatory for all article clerks/assistant lawyers to attend yet another postgraduate education course as well as pass the final oral exam, which tests three aspects of Danish Law seen from a practical perspective. The duration of the course is 36 days in all and is placed throughout the three years of article clerkship. The course is organised and carried out by the Danish Bar and Law Society.

#### **1.2.2.1 Purpose of the postgraduate education course**

Besides providing the young assistant lawyers with a general knowledge in different areas of law the purpose of the course is to introduce them to basic methods and concepts in the field of practicing law as a lawyer. Included in this are the questions of ethical rules concerning client's accounts.

#### 1.2.2.2 Filing of application

When the Three year period is completed and the other requirements are met, the assistant lawyer will file an application with the Ministry of Justice, with the purpose of obtaining a license to practice as a lawyer.

Upon such a request, the Ministry of Justice then asks the Danish Bar and Law Society for comments whom in turn will ask the Board of the local district of the Society for comments in this regard.

Are no objections made, the license will be granted immediately, and the title *advocate* is obtained.

#### 1.2.3 Right of audience in the Court

The license to call oneself *advocate* automatically grants authority to appear on behalf of the clients before the city courts. This does, however, not count in regards to appearing before the Courts of Appeal and the Supreme Court. To appear before these courts further conditions will yet have to be fulfilled.

Before being able to appear before the Appeal court, it is mandatory for the *advocate* to appear before such court in at least two ordinary cases, which are usually civil cases, where the advocate is acting on behalf of the plaintiff. It is up to the judge of the matter to decide whether or not the applicant has delivered an adequate performance. If this is the case, then the applicant will be granted his authority.

If the *Advocate* is aiming at obtaining the right to appear before the Supreme Court, he/she needs to have yet five years of practical experience during which the advocate needs to have been appearing before the Courts of Appeal on a regular.

If this five years period is successfully completed and the advocate receives a written statement hereof by the Courts of Appeal he/she is automatically permitted to appear before the Supreme Court. This authorization can be revoked if the Supreme Court finds that the advocate has handled a case in which he/she appeared in inadequately.

#### 1.2.4 Different types of work

Traditionally court appearances and actual court work were the predominant type of work for most lawyers. This is no longer the case. Today litigation and work as a defense counsel only counts for some amongst a lot of an advocate's many tasks. But, the various areas of work depends very much so on the nature of the firm. As in most countries the major firms in Copenhagen primarily advise private businesses on company and tax law, intellectual property law, etc., whereas the minor companies are more involved in general practice such as debt collection, transfer of real estate and probate and matrimonial law. This is of course generally speaking, and examples of the opposite definitely exist.

## **2 The Danish Bar and Law Society**

### **2.1 Mandatory Membership**

According to the Administration of Justice Act chapter 15 section 143, all persons holding the title of *Advocate* are members of the Danish Bar and Law Society. Thus membership is mandatory for anyone holding the title of *advocate*. The reason for this is the fact that the Danish Bar and Law Society does not only act as a representative body, but also as an organisation with various disciplinary functions. These functions will be described below.

### **2.2 The Governing by - and Structure of the Board**

#### **2.2.1 The structure of the Board**

The Danish Bar and Law Society is governed by a board consisting of a chairman/president and fourteen members. The Chairman/President is elected directly by all lawyers at the biannual General meeting. The current Chairman is Sys Rovsing Kock.

The fourteen other members are elected in local districts. The number of elected in each district depends on the number of lawyers practicing in that actual district. Since almost all major law firms in Denmark are situated in Copenhagen, quite a large number of lawyers, - approximately fifty percent of all lawyers in Denmark, - practice in this city. Corollary the district of Copenhagen elects six members of the board.

#### **2.2.2 The member's term of office:**

Board members, including the President, are elected for a period of four years, on top of which it is possible to stand for yet another election. This, however, is only for a two-year period. Consequently it is therefore possible to serve six years all together as a member of the board of the Bar and Law Society, which also counts for the President. Therefore, if a Board member is elected President, he/she could be serving for a combined period of maximum 12 years.

### **2.3 The Purpose and Tasks of The Danish Bar and Law Society**

#### **2.3.1 The purposes**

According to Articles of Association of the Danish Bar and Law Society Article 1, there are three main purposes, which the Danish Bar and lawyers Society is set out to maintain. These are as follows: 1) To promote the Interest of the profession, 2) to invigilate and enforce special and general duties of the profession and 3) to promote justice in general.

The realisation of these purposes is achieved in many ways. For instance, the board may represent the profession towards public bodies and may also

negotiate with the courts, the Ministry of Justice etc. on behalf of all members of the profession. Accordingly, external representation of the profession is an important part of the board's tasks. When acting on behalf of all lawyers the board is also allowed to appear as a party in litigation. Furthermore, the board undertakes several tasks within the broad field of negotiating and maintaining contacts with other profession, as well as representing the profession in various international bodies.<sup>1</sup>

#### 2.3.1.1 Promoting the interest of the profession

Article 18 sections 2-6 in the Articles of Association of the Danish Bar and Law Society describes the Bar and Law Society's duty to ensure a continuing promotion of the profession as such. Several initiatives stem from this article such as for example the mandatory postgraduate course that all article clerks have to attend in order to make sure that they are sufficiently educated so as to meet the requirements of the surrounding society.

Another attempt to ensure that the profession is keeping up with the times is the Bar and Law Society's recent involvement in developing a concept for mediation as well as a qualifying mediator course for lawyers has become a reality. Furthermore the Bar and Law Society has entered an agreement with The Ministry of Justice and the administration of the Law regarding a research project on mediation in court.

#### 2.3.1.2 Promoting invigilation and enforcement of special and general duties of the profession

##### 2.3.1.2.1 *The Practicing Lawyers Complaints Board*

One of the ways in which the purposes are sought achieved is by the establishment of a Complaints Board. More precisely The Administration of Justice Act requires that The Danish Bar and Law Society establish a Complaints Board. This is called The Lawyers Complaints Board and is an "institution", which operates under complete independency. The outcome of this is that the Danish Bar and Law Society cannot in any way interfere with the procedures or the decisions of the Complaints Board. Regardless hereof it is a condition in the Administration of Justice Act that the Complaints Board is established at the cost of the Danish Bar and Law Society.

In 1982 new legislation caused a change in how the Complaints Board was put together. Prior to this the Board had only consisted of practicing lawyers, which caused a considerable discontent amongst the public. The reason for this was that it was feared that the practicing lawyers were too easily acquitting their colleagues.

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<sup>1</sup> An example of such body is the Conseil des Barreaux de la Communauté Européenne, which is an organisation of all bar and law societies in the EU countries.

Consequently, the board was now put together so that it consisted of both laymen and lawyers, in order to meet the requirements of the public. A Supreme Court Judge was appointed chairman of the board.

Besides three judges the Court is now structured so that it consists of fifteen members all together. Amongst these nine are practicing lawyers. The rest (six) are laymen, most of whom are usually experienced businessmen or persons appointed by consumer organisations. This construction therefore leaves no room for the lawyers to acquit their colleagues, as it is the vote of the judge, in his capacity as chairman, which is decisive, in situations where the other members of the Complaints Board do not agree.

### **2.3.2 Different types of complaints cases**

There are three kinds of complaints that the Complaints Board may handle. The first one is complaints concerning the fee charged by a lawyer the second is complaints regarding a lawyer's ethical behavior and finally the third kind of complaint concern a lawyer's practical handling of a case.

Depending on which type of case it is, there is a certain procedure that needs to be followed. If the complaint is regarding the fee charged by a lawyer, the Board of the local district in which the lawyer is practicing will initially review this complaint.

Due to the structure if this local board which consist of a majority of lawyers, the consumer is allowed to appeal the decision of the local board to the Complaints Board. This right of appeal also counts for the lawyer if the local board decides to reduce the lawyer's fee.

When the complaint concerns the lawyer's ethical behavior, the local board, whose recommendation will be passed on the Complaints Board, first reviews the complaint. This recommendation is not binding.

### **2.3.3 Sanctions**

The Complaints Board can apply four different sanctions, according to the type and level of complaint. The first sanction is a; 1) Warning; the second a; 2) reprimand; the third; 3) Fines up to DKK 200.000; and the fourth; 4) Disbarment.

Common for all these decisions is that they may be appealed directly to the court of appeal by the lawyer. The court of appeal may then confirm or change the decision or even send it back to the Complaints Board.

The period of duration in which the disbarment will take place, differs from six months to five years depending on the nature of the complaint. The disbarment may also be for an infinite period. However, the lawyer upon whom this right is exercised will in most cases be allowed to apply for his/her license again after a period of ten years.

As mentioned in the beginning of section 1.3.2, the Board of the Danish Bar and Law Society is not in any way able to influence the Complaints Board directly. Nevertheless, it is possible for the Board to press charges at its own

initiative against an individual lawyer, where this is believed to be necessary, due to the lawyers lack of adherence to the Bar and Law Society's rules and regulations.

The most common sanctions, in cases where the lawyer has been too slow in dealing with a particular case or has dealt with it negligently, are a warning or a reprimand. These can also be used in cases of minor infractions concerning clients' accounts.

When it comes to disbarment, this sanction will mostly be used in cases of serious infractions against client account rules. In cases of definite embezzlement, the complaint will not be handled by the Complaints Board, but by the ordinary criminal court, where it will be requested that the lawyer should be disbarred. This solution is provided for in The Danish Criminal Code. The relevant provisions allow for disbarment where a lawyer is found guilty of an offence, which is of such a nature that he/she can no longer be accepted as worthy of the *trust and confidence* which is paramount to anyone who wishes to hold the title of advocate

The very principles of trust and confidence are particularly characteristic to the legal profession and are without question core values that need to be highly prioritised. It is in the light of this, that The Board of the Danish Bar and Law Society, as well as the Complaints Board are set out to ensure that that these principles are being observed.

#### 2.3.3.1 Promoting justice in general

The purpose of promoting justice in general is achieved by the manifold activities which the Danish Bar and Law Society initiates in order to meet this particular requirement. These include recommendatory hearing submissions to various Ministries as well as many other efforts to influence legislation, where this is thought desirable. In this regard it is important to stress the fact that the Bar and Law Society never engages in political discussions. Its point of views is merely of a judicial character.

The Bar and Law Society is also actively engaged in impartial and versatile debates regarding questions of law and order. This is accomplished through its publishing of the periodical "Lov og Ret" as well as the Law and Bar Society is also engaged in the making of a weekly radio show.

Furthermore the profession's interests are taken care of by the establishment of a set of ethical rules. This is to ensure that the necessary values such as the lawyer's independency and impartiality amongst others are safeguarded. Hereby the public security is protected, as the lawyer's impartiality is crucial to any democratic state in order to avoid that the lawyer gets influenced due to the fear of retaliatory measures.

The obligation to inform about these decisions regarding the Conduct Codes rests upon the Bar and Law Society, and is carried out by referring to important and principal decisions in the periodical "Advokaten".

### **2.3.4 Ethical rules**

Ethical rules are to be found in the Code of conduct, which The Board of the Danish Bar and Law Society has adopted. In this specific provisions, regarding the general behavior of the members of the profession, are found. Moreover The Code of Conduct encompasses specific provisions concerning the limits of the actual actions, which a lawyer may undertake to further his/her client's interests.

Due to the importance of maintaining the public's faith, trust and respect i.e. living up to the duties that goes with the important societal position that the legal profession holds, these rules also cover the limits of actions, which a lawyer may undertake outside his profession. This is to ensure the maintenance of the integrity of the profession.

The Practising Lawyers Complaints Board makes the actual interpretation of the extent of the content of these "rules". This is being achieved whilst handling concrete cases regarding whether or not an advocate has fulfilled his/her obligations cf. The Code of Conduct. As mentioned before the decision can be appealed to the ordinary Court system.

In order to correspond more adequately to the European Code of Conduct agreed by the European Lawyers Council, CCBE, the code was renewed in 1999. Amongst its most important provisions is, article 2.1, which concerns independency as well as article 2.2. which refers to a lawyer's obligation to maintain confidentiality as well as the essence of Article 3.2 regarding a lawyers duty only to pursue the interest of his/her client is crucial to protecting the integrity of the profession.

### **2.4 *Malpractice Insurance***

In accordance with the Articles of Association of the Danish Bar and Law Society, it is mandatory for all practicing lawyers in Denmark to draw an insurance against malpractice. This must cover a minimum amount of DKK 1, 383,000 as per. 01.01.2001, and covers damages suffered due to negligence on behalf of the lawyer, but do not cover gross negligence or willful misconduct.

The prerequisite for compensation is therefore that the negligence can be characterised as ordinary, and in this regard, the insurance companies have generally been quite liberal when interpreting the definition hereof.

Should this, however, happen, there is still another remedy that the client can seek. This is the Compensation Fund. It was established by the Danish Bar and Law Society, with the purpose to help out clients in cases of embezzlement or other criminal behavior on the part of lawyers. Also the fund pays where the ordinary insurance for whatever reason will not pay in the case of malpractice. Usually the fund will pay up to the current minimum of the mandatory insurance and no further, regardless of the actual damages experienced. The fund is based on mandatory yearly contributions from all practicing lawyers



### **3 The Future of the Danish Bar and Law Society**

#### ***3.1 The Focus and Marketing of Core Values***

The modern legal profession in Denmark is like many other countries characterised by a large number of merges, which have yet again raised the question of independence. Therefore the focus on core values such as integrity, impartiality and independence is becoming an ever so important obligation for lawyers to take into account.

This tendency goes hand in hand with the surrounding society's increasing focus on ethics both in relation to running companies, in regards to the specific codes of conduct regulating various professions, as well as in relation to the implementation of ethical considerations in legislation.

#### ***3.2 Maintaining Qualified Labor***

Besides the need to get a firm grab on the professions core values and market these in an appropriate and sufficient way there is an enormous need for the profession as such to ensure the maintenance of sufficient labor in modern legal law firms. This is due to the fact, that almost half of the Danish legal profession is expected to retire within the next 10-15 years. On top of which there seems to be a tendency amongst young lawyers with less than 10 years of seniority to leave the profession for jobs in organisations and in the business sector as such. Holding on to and recruiting new qualified labor is therefore of the utmost importance in the years to come.

#### ***3.3 The Knowledge- Economy and its Strategic Challenges***

Finally the strategic challenges imposed by the "knowledge- economy" needs to be sufficiently met in order for the legal provisions to maintain its areas of work. This implies the need for constantly developing the qualifications of the legal profession as well as innovation in the legal counseling must be considered paramount in order to adjust and survive as a profession.

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