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Contact: Cecilie Thornvig Andersen
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Questionnaire of the Special Rapporteur on the independence of judges and lawyers

1. Please provide information on the way the legal profession is organized and regulated in your country. What are the legal bases for its establishment (e.g. constitutional provisions; ordinary law or other)? Please also indicate the main legal provisions protecting the right of lawyers to freely join or create a local, national or international association, and mention existing associations.

The organisation of the legal profession and the regulation thereof

The Danish Bar and Law Society, of which it is mandatory for Danish lawyers to be a member, is established through the Danish Administration of Justice Act. The Council of the Danish Bar and Law Society (“Advokatrådet”) performs the supervision of all lawyers in Denmark in accordance with the Danish Administration of Justice Act.

Disciplinary proceedings against lawyers

The Disciplinary Board for Lawyers (“Advokatnævnet”) is an independent board established by the Danish Bar and Law Society in accordance with the Danish Administration of Justice Act. The Disciplinary Board handles complaints against lawyers. Complaints can e.g. regard that a lawyer has not lived up to the standards of the profession or has charged a fee that is too high. The disciplinary board consists of 21 members. The chairmen are three judges, one from the Supreme Court, one from a High Court and one from a City Court. Nine members are lay members, appointed by the Minister of Justice upon nomination from a number of public authorities and organisa-

Slotsholmsgade 10
DK - 1216 København K.

Phone +45 7226 8400
Fax +45 3393 3510

www.justitsministeriet.dk
jm@jm.dk

tions, and nine members are lawyers, appointed by the members of the Danish Bar and Law Society. The Disciplinary Board can express criticism, impose a fine on the lawyer or, in severe cases, disbar the lawyer.

Other associations

The Danish Bar and Law Society is not an association of lawyers, a trade union or a lobby organisation. Thus, the Danish Bar and Law Society does not argue the commercial or financial interests of its members. Lawyers are free to establish associations of their own aimed at marketing activities etc., and several of these are known to exist, such as the Association of Danish Law Firms (“Danske Advokater”), the National Association of Defence Lawyers (“Landsforeningen af Forsvarsadvokater”) etc. There are no legal provisions or other provisions prohibiting or otherwise limiting lawyers from joining or establishing such associations.

2. Does a professional association of lawyers play a role in the regulation of the profession? If so, please provide information on:

(a) the exact denomination of the body;

(b) the legal basis for its establishment (e.g. constitutional provisions; ordinary law or other);

(c) whether the association has been established as an ‘independent’ and self-governing association;

(d) the composition and appointment process of the executive body of the association.

As mentioned above, the Council of the Danish Bar and Law Society (“Advokatrådet”) is responsible for the supervision of the Danish lawyers. The Council and its responsibility for the supervision are established by law. The Danish Bar and Law Society and the Council are independent and self-governing. The Council consists of 15 members of which one is president. The president is elected for a four-year period amongst all lawyers at a biannual meeting of all the lawyers. The rest of the members and two substitutes for each of these are elected for a four-year period by the local subdivisions of the Danish Bar and Law Society (“advokatredsene”).

3. Please provide information on the relationship between the association of lawyers and the Executive, Legislative and Judiciary powers. In particular, please provide information on the role of the Ministry of Justice and/or the judiciary in relation to the establishment and functioning of this association.

The Danish Bar and Law Society and the Council are established by law. The Danish Bar and Law Society issues draft by-laws for the society as well as rules regarding lawyers' duties regarding the handling of funds entrusted to the lawyer's care etc. These draft by-laws and rules have to be approved by the Danish Minister of Justice. Apart from this, the Danish Bar and Law Society functions independently from the executive, legislative and judiciary powers.

4. Please provide information on the role that professional associations of lawyers play with regard to:

(a) the admission process to the legal profession and the licensing of lawyers;

(b) the conduct of disciplinary proceedings against lawyers;

(c) the provision of legal aid;

(d) the protection of individual lawyers from any form of intimidation, hindrance, harassment or improper interference in the exercise of their functions;

(e) the development and implementation of legislation concerning the free exercise of the legal profession and the administration of justice.

The admission process to the legal profession and the licensing of lawyers

The admission process is administered by the Department of Civil Affairs under the Danish Ministry of Justice. The Danish Bar and Law Society administers the basic training that is required of a trainee lawyer to become a lawyer. The Department of Civil Affairs will ask the Danish Bar and Law Society if anything speaks against the trainee lawyer becoming a lawyer.

The conduct of disciplinary proceedings against lawyers

As mentioned, questions on disciplinary proceedings are handled by the independent Disciplinary Board. If the Council of the Danish Bar and Law Society is of the opinion that a lawyer does not live up to the standards of the profession, the Council can file a complaint with the Disciplinary Board, which will then process the complaint.

The provision of legal aid

On a voluntary basis lawyers have established local offices for legal aid. The Danish Bar and Law Society has no direct involvement in this, but does run the website advokatvagterne.dk, which has a list of the lawyers who have established local offices for legal aid.

The protection of individual lawyers

It follows from the by-laws of the Danish Bar and Law Society that one of the purposes of the society is to protect the independence and integrity of lawyers. This can happen generally, such as through general examinations of instances where lawyers have felt threatened, and also through support to lawyers in individual cases. Thus, it also follows from the by-laws that the Council can support a lawyer whose independence or integrity is under pressure with contact to the relevant authorities or by offering representation in a civil case on behalf of the lawyer.

Moreover, in the unlikely event that a public authority should harrass an individual lawyer, the lawyer also has other remedies for this. The harrassment is likely to violate the principles of good administration, and therefore it may be a matter for the Ombudsman. The lawyer will also have the option to file a civil lawsuit against the public authority. If a private individual harrasses a lawyer, or does something similar, the lawyer will likewise have the option to file a civil lawsuit against the person or file a complaint with the police, as in any other case.

The development and implementation of legislation

Whenever there are proposals for legislation etc. that touches upon lawyers, the Danish Bar and Law Society is consulted.

5. Is membership in the professional association of lawyers mandatory to practice law in your country? In case membership is a prerequisite to practice law, please provide detailed information on the measures the State has taken to ensure access to justice in cases where there is a shortage of lawyers in the whole country or part of its territory.

Membership of the Danish Bar and Law Society is mandatory for Danish lawyers. In Denmark there is no connection between this membership and the number and distribution of lawyers. Furthermore, there is no monopoly on giving legal advice in Denmark, and as such persons who are not licensed lawyers can also provide legal advice.