

IAJ/UIM

Study Commission IV — 2022

Judicial Workplace and Judicial Independence

What is the impact on judicial independence of the judicial workplace (including nominations and appointments, independence in decision making, governance, assignments, fund and other resources)?

Please provide examples in the judicial workplace that foster judicial independence and identify barriers and practices that impede or negatively impact judicial independence.

The Danish Constitution, section 3 ensures the judiciary's organisational, functional and personal independence. It establishes the separation of powers, as designed by the French philosopher Montesquieu in 1748, the vesting of the legislative, executive, and judicial powers of government in separate bodies.

Since the enactment of the Danish Constitution in 1849, the judiciary has gradually assumed the responsibilities of the overall and regulatory authority of the Danish Parliament (the legislature) and the King (in practice: the government, the executive). Today the judiciary considers itself, on request, entitled to declare an act unconstitutional or overrule decisions made by government services.

Concurrently, the European Convention on Human Rights and other international conventions have given the judiciary ample room for interpretation, thereby allowing the judiciary to influence the development of the law in a way and to a degree that were unknown just a few decades ago.

The extensive powers of today's judiciary require exacting standards of independence and due process. These standards are inter alia provided by Article 6 of the European Convention on Human Rights, according to which everyone has a right to a fair and public trial, within a reasonable time, by an independent and impartial tribunal established by law.

Appointments

In 1999, further measures were taken to ensure the independence of the judiciary, i.e. the formation of the Danish Court Administration and the Danish Judicial Appointments Council.

Prior to this, there had been a long political debate on the best possible way of ensuring judicial independence of the Danish government and parliament. More specifically, it was debated whether it was appropriate for the Ministry of Justice to administer the courts and appoint judges. The debate led to the appointment of a court committee. The committee's report formed the basis of the court reform in 1999.

After a long debate in the Danish parliament and the printed press, a unanimous Danish Parliament resolved that the courts were no longer to be administered by the Ministry of Justice. Although there was no proof that the then-current system had an adverse effect on judicial independence, the Danish parliament did not want to leave room for even a theoretical possibility that such independence was not beyond question. There were to be no more ties between the judiciary and the Ministry of Justice. The Danish Court Administration and the Danish Judicial Appointments Council were established on 1 July 1999.

The formation of the Danish Court Administration was aimed at strengthening the autonomy and independence of the judiciary and demonstrating its position as the third power of government.

The formation of the Danish Judicial Appointments Council was aimed at making judicial appointments more transparent, indicating judicial independence and increasing the prospects of broader recruitment.

On formation of the Danish Court Administration and the Danish Judicial Appointments Council, the organisation that we now call the Courts of Denmark was established. This organisation is composed of the courts, the Appeals Permission Board, the Danish Judicial Appointments Council and the Danish Court Administration. The organisation has separate appropriations in the Budget. The board of the Danish Court Administration shall – within the given appropriations – ensure that the courts are run and developed adequately and properly.

Independence in decision making

The Danish courts consist of the Supreme Court, two courts of appeal and 24 district courts. According to our constitution, the judges are independent in the decision of the individual case. Judges cannot be instructed in how to adjudicate, and the Supreme Court decides cases with final effect. The courts can set aside a law passed by the parliament if it is contrary to the Constitution.

Judges cannot be dismissed or transferred against their will. They can only be dismissed after trial and judgment.

A judge can not take on extra-judicial duties without permission from an independent committee on extra-judicial duties of judges who decides whether such activities of the judge are likely to have an effect on his or her independence.

Governance

The Court Administration (Domstolsstyrelsen) is responsible for the central administration of the courts and shall support the independence of the courts and the judges. It has its own board and is an independent administration body.

Fund and other resources

Funding for the courts' activities is included in the State Budget, as a subsection under the Ministry of Justice. An Act of the State Budget is passed by Parliament in December each year and the budget of the judiciary included in the same way as other state institutions. The courts have till now had a budget for 4 years and are now bargaining to get a better one for the coming 4 years which is not easy.