### Appeal Boards as an Alternative to Courts - Danish Experiences 以特别法庭/上诉委员会为法院的替代选择—丹麦经验

转型时期的中国社会与司法研讨会

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## Background

- Chair of Environmental and Energy Law
- 15 years as member of the Energy Board of Appeal
- Denmark has been through periods of transitions
  - Towards Industrialization
  - Towards market based regulation within the Energy Sector
- Widely use of Appeal Board in Denmark

## **Appeal Boards**

- Appeal Boards are one way of testing the validity of an administrative decision
- The mail alternative is (administrative) courts
- A third alternative it the use of an Ombudsman

## **Types of Appeal Boards**

- Public Law Appeal Boards
  - 2ed Administrative Instance on Public Law Decisions
  - Governed by general administrative rules
  - In certain policy areas lex specialis applies
- Private Law Appeal Boards
  - Non court alternative for Private Law Issues
  - Not governed by general administrative rules
  - Consumer protection
- The Ombudsman (since 1954)

– A Controller on Public Authorities Bent Ole Gram Mortensen

## The Appeal board

- A legal security for the citizen
  - Securing the citizens a 2<sup>nd</sup> instance to review the decisions
  - No lawyers required in principle (low costs for citizens and for society as such)
  - Some appeal boards are also relevant for business
- May be send to the courts afterwards
  - Long duration of the case
  - Can be abused to postpone the effect of a decision
  - Used not only by citizens, NGOs but also by competitors

## The composition of the Appeal board

- Generally the composition is decided by ministerial orders and consist of the following
  - Chairman
  - Deputy chairman
  - A number of experts
  - Time limit on memberships of Appeal boards
- The chairman selects the experts who shall participate in each hearing

## The recruiting of Appeal board members

- Normally it is the minister who selects the members of the Appeal board
- Can be chosen either as arms length or representing different groups
- The chairman is often a judge (not a legal demand)
  - A way to secure neutrality
  - Problematic if a High Court judge has been a chairman and the case later is brought before the lover ranking City courts

### The members of the Appeal board and professional insight

- Laymen
  - Represents the generel interest of the public
- Experts
  - Applies their knowledges to help reach a decision
- Trades Representatives
  - Represents the interest of the body they are from

## The independence of the Appeal Board

- Fixed-term appointment
  - Decided by ministerial orders
  - Normally reappointment can take place
- The Chairman appoints the Board for a specific case
  - Can be abused
- Conflicts relation/disqualification

The member in question will not participate in the decision if it has a conflicting interest

## **Examination of the decision**

- Main rule: A complaint to an appeal board do not suspend the obligation to follow the original decision
- Obligation or right to take a case
  - Appeal boards can only process a case if a party to the first instance decision complaints
  - Possible deadline

## **Examination of the decision**

- Mail rule: No processing fee
  However some Appeal boards require a small fee
- Attorney Representation
  - A citizen can chose to be represented by an attorney
    - Should not be necessary
- Legal aid

- Can be provided under some circumstances

## Official Principle versus negotiation principle

#### **Official Principle**

- The judicial authority investigates the case
- The Appeal boards are subject to this principle

#### **Negotiations Principle**

- The judicial authority decides based on the parties presentation of the case
- The courts are generally subject to this principle



## **Courts versus Appeal Boards**

#### Courts

- Legal background for those who make a decision
  - Expertise can be involved
- Fee are to be paid but can be lifted of
- A lawyer is needed
- Formal procedure

#### **Appeal Boards**

- All sorts of expertise for those who make decisions
- Fee possible
- No lawyer is needed
  - Complex cases may call for a lawyer
- More informal procedure possible and often the case

# The economic independence of the Appeal board

- The budget of the Appeal boards is decided by the Finance Act or the minister in charge
- The Appeal boards have no influence on their income
- The Appeal boards can only cut costs numbers of employees

## The relationship between the board and the courts

- Basic right to have court tried board decisions
   Art. 63 of The Constitutional Act of Denmark
- Main rule: The right to two court review
  - The City courts (locally based)
  - The two High Courts
    - East and West
  - The Supreme Court
    - Only in special circumstances

## The relationship between the board and the courts

- The possibility of an Appeal board's review must have been exhausted before going to the courts
  - Only a demand if so stated in the legislation
- The possibility of a deadline to bring the case before the courts
  - No general deadline stated in the Code of Courts

### The Danish Parliamentary Ombudsman

- External controller (an institution under the Parliament)
- No sanction rights
- Can only make an assessment of a case and publish it/contact the minister
- However his assessments have been essential for the legal development in some areas
- A ombudsman function for municipalities can exists as an internal function

## Thank you for your attention

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