

The Danish Supreme Court's answer to the Questionnaire for the 21st Colloquium of the Association of the Councils of State and Supreme Administrative Jurisdictions of the European Union.

Question 1:

In the Danish legal theory there is a distinction between reversal in case of a valid and a void administrative decision.

If the decision is voidable the issuing authority normally has an obligation to revoke the decision on its own initiative, a so-called annulment. Lack of legal basis generally results in that the administrative act is voidable. Should administrative practice for example have to be changed as a result of a judgement declaring that the administrative authorities have misinterpreted the law, the administrative act may be voidable and may therefore be annulled by the issuing authority. The issuing authority can abstain from annulling a voidable administrative act if overriding reasons are present, e.g. the citizen's legitimate expectations and / or the lapse of time.

(a) The rules apply generally and not specifically to Community law.

(b) The courts of general jurisdiction, the administrative issuing authority and/or the superior administrative authority. Generally, the superior administrative authority can only reverse a decision to the same extent that the subordinate administrative authority under the general rules of revocation would have been able to, unless the review of the superior administrative authority is part of an administrative recourse.

(2)

See the reply to question 1.

(3)

Situation **(a)** would be decided on the merits of each individual case: inter alia, the protection of the citizen's legitimate expectations, including the time passed since the decision was issued, will be deciding factors in determining whether the decision should be annulled.

In situation **(b)** the outcome could be the source of doubt. It raises the question as to which extent the principle of rule of law should prevail in favour of the citizens, who in good faith have presumed that they could rely on the national provision. The question regarding the conformity between a Danish statute and Community law was presented to the Supreme Court in the judgement in UfR 1994.450 H.

The ECJ decided that a duty claimed in accordance with the Labour Market Maintenance Act was incompatible with article 33 in sixth VAT Directive of the European Union. The incompatibility was stated by the ECJ in a judgement issued on the 31st of March 1992 as a preliminary ruling on the issue. The Supreme Court ruled that the claimed duties were to be refunded except in case of the passing on of the duties to subsequent purchasers.

In situation (c) the administrative decision most likely would be annulled. When statutory provisions has to be set aside cause to the higher ranking Community law it is even more clear that administrative acts contrary to Community law cannot be upheld. This also follows from the fact that an administrative act contrary to a national provision would normally be invalid.

(4)

(a) A party to an administrative decision is not required to challenge the decision in the course of the administrative procedure in order to maintain the right to have it revoked at a later stage. An administrative authority is normally obliged to review a decision if a citizen takes the initiative to have the act revoked and brings substantial new facts or arguments.

(b) Appeal to the court is not a precondition for revocation, since the administrative authority may revoke the decision. In case judicial action is needed, it is sufficient to bring the case before the court of 1.st. instance. By request from one of the parties the court of 1.st. instance can refer the case to the appeal court, if the case raises issues of principle (the Administration of Justice Act, § 226).

(c) In general it is not a condition for the admissibility of a challenge of an administrative decision before a court that administrative appeal or complaint to the Parliamentary Ombudsman has been exhausted.

(5)

It does not make a difference if the question is raised in the course of the administrative procedure or during proceedings before the courts. Both methods can be used.

(6)

In reviewing the legality of administrative decisions Danish law follows method b thus applying Community law ex officio. In practice, however, the relevance of Community law will often be brought to the courts attention by the parties.

(7)

No.

(8)

The problem has to my recollection never presented itself in Denmark.

(a) The administrative authority would probably be authorised to revoke a decision if a revocation would be in favour of the addressee and not in conflict with the interests of a third party.

(b) § 399 of the Danish Administration of Justice Act contains a rule in accordance with which the Supreme Court in exceptional cases can allow the reopening of judicial proceedings or allow appeal of a judgment delivered by the district court or appeal court even though the time limit for appeal has expired. The conditions for such reopening would most likely not be present in a situation, in which reopening of the case would be to the detriment of the addressee of the administrative decision.

(9)

Yes

(10)

My view is that the Kühne case shows that the point of departure of the Court is the national legal systems, however at the same time adding that a balance in relation to Community law is needed. It is my view that the Court accepts the principle of procedural autonomy. However, discrimination between claims based on Community law and claims based on national law is not allowed.

(11)

Danish law seems to me to be consistent with the principles of equivalence and effectiveness. Reference can be made to the Supreme Court ruling of 4th of May 2001, UfR 2001.1705 concerning the principle of effectiveness. The Central Customs and Tax Administration levied execution against a border shipping agency, F, for agricultural levy and import VAT etc. for a total amount of approx. 14, 5 million DKK. The execution was brought before the

bailiff's court which ruled that § 71, subsection 2, of the Danish Tariff Act and article 244 of the Community Customs Code could not preclude the Bailiff's Court from trying an execution conducted by the customs authorities in accordance with § 501 of the Danish Administration of Justice Act. However, having regard to the extent and nature of the presentation of evidence required the case was not found suited for processing before the Bailiff's Court. The national court and the Supreme Court affirmed the ruling of the Bailiff's Court. The Supreme Court inter alia remarked that it was beyond any reasonable doubt that § 501 fulfilled the requirements of the procedural rules that follow from Community law.

(12)

All three questions: yes.

(13)

The Danish Act on Administrative Procedure does not provide any time limit for the submission of a motion for revocation or to open legal proceedings to this effect. However, other Statutes may have provisions to that effect. There is no time limit in § 399 of the Danish Administration of Justice Act regarding extraordinary reopening or appeal of cases.

The fourth condition in the Kühne case seems to be well-founded and in accordance with the principle of rights being forfeited by "passivity".

(14)

State liability presumes that the citizen has suffered an economic loss as a result of the faulty administrative decision. If the loss may be avoided or mitigated by revocation the citizen is supposed to pursue that approach.

(a) There are no formal links.

(b) Cases concerning the liability of the state are tried by the courts of general jurisdiction, since Denmark has no administrative courts. If the validity of the claim for damages is undisputed the authority can agree to an out-of-court settlement. The courts may decide both the question of invalidity and a potential liability claim at the same time.

(c) Normally, the interested party initially approaches the administrative authority. This is both faster and cheaper and there is no reason for legal action if the parties can reach an agreement.

(d) In principle, there is no problem in bringing a case before the court and at the same time trying to reach an out-of-court settlement. Judicial review of administrative decisions can take place during civil cases, criminal cases, bailiff's cases, registration cases etc.