

CRIMINAL PROCEEDINGS
AND DEFENCE RIGHTS
IN DENMARK

This leaflet covers:

- Information about Fair Trials
- Definitions of key legal terms
- Information about criminal proceedings and defence rights in Denmark
- Useful links

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About Fair Trials

Fair Trials is a non-governmental organisation that works for the right to a fair trial according to internationally-recognised standards of justice.

We believe the right to a fair trial is an essential part of a just society. Each person accused of a crime should have their guilt or innocence determined by a fair and effective legal process. But the right to a fair trial is not just about protecting suspects and defendants; it also makes societies safer and stronger. Without fair trials, trust in justice and in government collapses.

Despite the importance of fair trials being recognised by the international community, this basic human right is being abused day-in-day-out in countries across the globe. We're working to put an end to these abuses, towards realising our vision of a world where every person's right to a fair trial is respected.

If you think an important question is not covered by this note, please let us know. We would appreciate it if you could also take a few moments to give us some feedback about this note. Your comments will help us to improve our services.

"Fair Trials" includes Fair Trials International and Fair Trials Europe. Fair Trials International is a registered charity (no. 1134586) and in 2010 was incorporated with limited liability in England Wales (no. 7135273). Fair Trials Europe is a registered public foundation in Belgium (registered number 0552.688.677). We were initially founded in 1992 with the name "Fair Trials Abroad".

If you require this leaflet in large print, please contact using the details at to the end of this document.

IMPORTANT

This leaflet was last updated in March 2015. The information contained in this document is provided for information purposes only and is not intended as legal advice, nor does it constitute legal advice. Whilst we endeavour to keep the information up to date and correct, Fair Trials makes no representations or warranties of any kind, express or implied about the completeness, accuracy, reliability, suitability or applicability to individual cases of the information contained in this leaflet. Any reliance you place on such material is therefore strictly at your own risk. Fair Trials disclaims any liability to the fullest extent permissible by law for any loss or damage of any kind arising from the use of the information provided. You should always seek professional legal advice from a lawyer qualified to practice in the jurisdiction you are in.

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DEFINITIONS OF KEY LEGAL TERMS

Appeal (*appel*): An opportunity to dispute a decision made at trial by asking a higher court to review it. This can result in the decision being overturned or changed.

Arrest Warrant (*arrestordre*): A document authorising the police to make an arrest, search premises, or carry out some other action relating to the administration of justice.

Bail (*løsladelse*): The temporary release from police custody or prison of a person accused of a crime and awaiting trial. Bail, in the form of depositing money as a form of guarantee for your release (*løsladelse med kaution*) is rare in Denmark.

Bar Association (*Advokatsamfundet*): An organisation whose role is to represent lawyers and help people in their dealings with lawyers.

Charge / Indictment (*sigtelse*): An official statement accusing a person of committing an offence.

Consulate (*konsulat*): The section of the embassy whose task is to assist its citizens.

Court of Appeal (*ankeinstans*): The court that is competent to hear appeals (i.e. challenges) made to decisions of the lower courts

Court of First Instance (*førsteinstansdomstol*): A lower court where a trial is initially heard.

Embassy (*ambassade*): The office of a government official who resides in a foreign country and represents his/her government's interests.

European Court of Human Rights (*Den Europæiske Menneskerettighedsdomstol*): The Court is based in Strasbourg, France, and hears human rights cases against the 47 countries which make up the Council of Europe (which is different from the European Union).

Investigative Judge (*undersøgende dommer*): A judge who performs an examining role and is actively involved in the conduct of investigations.

Judge (*dommer*): A person with authority to hear and decide on cases in a court of law.

Judgment (*dom*): A decision on a case provided by a judge in a court of law.

Lawyer (*advokat*): A person whose profession is to give legal advice and assistance to clients and represent them in court or in other legal matters.

Legal Aid (*fri proces*): Financial assistance provided to a person who needs a lawyer and who cannot afford to pay for one.

Plea Bargain (*aftale om delvist tiltalefrafald / påtaleopgivelse*): A procedure which allows the defendant to plead guilty in exchange for a less severe sentence.

Police Custody (*anholdelse*): Detention of a suspect by the police after arrest

Public Defender (*beskikket forsvarer*): A defence lawyer who is appointed to an individual facing criminal charges, if s/he does not appoint a lawyer of his/her own.

Pre-trial Detention (*varetægtsfængsling*): Detention in prison during the investigations (and often during the trial itself as well), which happens before the decision on guilt or innocence is made by the court.

Public Prosecutor (*anklager*): A person who conducts a case against a person who is accused of a crime.

Remand (*varetægtsfængsling*): The act of sending a person, accused of a crime, into prison until the trial.

Sentence (*straf*): The punishment assigned to a person convicted of a crime as fixed by a court of law.

Victim is known as “*offer*” in Danish.

Warrant (*kendelse*): A document issued by a legal or government official authorising the police to make an arrest, search premises, or carry out some other action relating to the administration of justice.

Witness is known as “*vidne*” in Danish.

INFORMATION ON CRIMINAL PROCEEDINGS AND DEFENCE RIGHTS IN DENMARK

Q1. WHERE DO THE LAWS OF DENMARK APPLY?

Danish laws apply in the Danish territories on mainland Europe, and its surrounding islands, including Zealand ('*Sjælland*') and Funen ('*Fyn*').

Greenland and the Faroe Islands are constituent countries of the Danish realm. They are not independent of Denmark, but they are self-governing territories. The information in this note does not cover Greenland and Faroe Islands, whose laws differ from that of Denmark itself. Both Greenland and the Faroe Islands are outside the European Union.

Q2. WHAT ARE MY RIGHTS UPON ARREST?

You can be detained for an initial period of 24 hours after your arrest. You should be brought before a judge within this period, who may then decide whether to extend your detention, or to release you.

(a) Right to information:

(i) Will the police inform me of my rights? Will this be done orally or in writing?

The police will inform you of your right to have an attorney present during questioning and your right to remain silent. This information is often given orally.

(ii) Do I have the right to be informed of the allegations/charges against me?

When arrested, the police are required to inform you of the accusations against you and the exact time of your arrest.

(b) The right to inform people:

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(i) **Do I have a right to have the consulate informed of the arrest?**

If you are not a Danish national, you have the right to contact your embassy or consulate, and to inform them of your arrest. You can ask the police to help you contact the embassy, if they have not done so already on your behalf.

(ii) **Do I have a right to inform my family of the arrest?**

In most cases, you should be able to inform a member of your family about your arrest, but the police may not allow you to do this, if they believe that it could interfere with investigations.

(c) **Do I have a right to a lawyer?**

You should be given access to a lawyer of your own choice before you are questioned by the police. You also have the right to be questioned in the presence of your lawyer. The police should help you find a local lawyer, if you do not know one already.

(d) **Do I have a right to a translator/interpreter?**

If you are unable to speak Danish, you should be given access to an interpreter free of charge. You are also given access to free interpretation for correspondence with your lawyer.

(e) **Do I have to talk to the police or can I remain silent during police interrogation? Will it work against me if I am silent?**

You have the right to remain silent at all stages of your criminal proceedings. However, you should speak to your lawyer for his/her opinion on whether or not this is a good idea in your case.

Q3. WHEN WILL I KNOW ABOUT THE CASE AGAINST ME?

You should be informed of the accusations against you, at the very latest, before you are interrogated, and be charged at the early stages of the investigation.

The police must decide whether or not to indict you within a reasonable period of time after you have been charged. If you have not been indicted within 18 months, you may request a court hearing. Suspects are most often indicted shortly after the investigation has been completed.

Q4. HOW DO I FIND A LAWYER? WHAT IS THE ROLE OF MY LAWYER?

(a) How do I find a lawyer?

You can contact the Danish Bar Association ('*Advokatsamfundet*'), which may be able to help you identify a lawyer who might be able to help you. The Bar Association also maintains a website which you can use to look for lawyers by region, and by area of practice.

(b) I cannot afford to pay for a private lawyer, what should I do? (Is there legal aid? How should I apply? What are the criteria to be eligible? What is covered by legal aid?)

If you are accused of a criminal offence, you have the right to a lawyer. If you do not choose a lawyer, a public defender will be appointed by the court. The fees for the public defender are covered by the state, but if you are convicted, you will have to reimburse the government for these expenses.

If you are unable to reimburse the government for the costs of the public defender, the government may take legal action to recover the costs.

There are certain exceptional cases in which the court, taking into consideration your personal circumstances, and the facts of your case, may decide that you should not be required to pay back all or any of the costs of your public defender.

If you have hired a private lawyer, and you are acquitted at the end of your trial, you are ordinarily not entitled to claim compensation from the government to cover your lawyer's fees. However, depending on the case, the government may, as an exception, grant such compensation.

In Denmark, 'legal aid' is not available for criminal proceedings.

(c) What is the role of my lawyer? Will s/he investigate the case?

As a general rule, lawyers cannot carry out their own investigations, and must instead request to have further investigations carried out. If the police refuse to comply with the request, their refusal can be challenged in court, which can order the police to carry out the investigations. Your lawyer can also take part in police investigations.

(d) I am unhappy with my lawyer: How can I change lawyer? How can I complain about my lawyer?

If you have appointed your lawyer yourself, and you are paying for his/her services privately, you should be able to change your lawyer as you wish.

If you have serious concerns about your lawyer, you can also file a complaint with the Bar Association.

If you have an appointed public defender, you still have the right to change lawyer. You can do so by contacting the police, the court or the new lawyer whom you have chosen to take over the case.

Q5. WILL I HAVE TO STAY IN PRISON UNTIL MY TRIAL STARTS? IF SO, FOR HOW LONG?

The information given below is specific to Denmark. For general information and tips about how to obtain your release prior to your trial, please refer to our note of advice on *Applying for Release Pending Trial*.

(a) Will I have to stay in prison until my trial starts? What are the alternatives?

You could be kept in detention if you are being accused of a crime which carries the maximum sentence of at least 18 months, and if the police believe that you may be sentenced to over 30 days in prison, if convicted.

You may also be held in detention if the court believes that:

- You may try to avoid your trial;
- You may try to interfere with investigations, if released;
- You may try to commit other offences; and/or
- You have been accused of a particularly serious crime.

You could be released with conditions, but bail in the form of depositing money with the court to secure your release, is very rare in Denmark.

(c) How and when can I apply for release while waiting for trial?

You should be brought to court every four weeks, so that your detention can be reviewed. If the court decides to extend your detention, you can appeal against the decision to the High Court.

(d) How long can I be kept in prison before my trial starts?

If the maximum penalty you face is under 6 years in prison, the maximum period for pre-trial detention is 6 months. If you face the risk of being sentenced to more than 6 years in prison, you can be held in detention for up to a year before your trial can begin. Time limits on pre-trial detention may be extended in exceptional circumstances.

(e) Can I go back to my home country if I have been released pending my trial?

You may go back to your home country, unless it is one of the conditions of your release that you do not leave Denmark pending your trial. Most foreign nationals are not permitted to leave Denmark whilst waiting for their trial to go ahead.

(f) What will happen if I breach the conditions of my release?

If you breach the conditions of your release, the court may order your detention.

(g) Do I need a lawyer to apply for release?

In matters concerning pre-trial detention, a public defender will be appointed to you, and your request for release is most often put forward by the public defender.

Q6. HOW LONG BEFORE MY CASE GOES TO TRIAL?

Your trial should take place within a 'reasonable time', but there are no specific legal timeframes in which your case should go to trial. You can make a request to the court to review the progress of your case, or to set a timetable for your criminal proceedings, if there are delays in your case.

(a) There are always delays with my case, does that mean my lawyer is doing a bad job?

There could be a number of different reasons for delays in your case, so your lawyer may not necessarily be responsible.

Q7. CAN I PLEAD GUILTY? WHAT ARE THE CONSEQUENCES OF PLEADING GUILTY?

If you plead guilty, you will appear before a single judge in court. You will not receive a full trial, but you cannot be convicted unless the judge is satisfied that there is some other evidence to support your confession. You will not receive a discount on your sentence simply on the basis of your guilty plea.

Q8. WHAT HAPPENS AT TRIAL?

Trials usually start with an opening speech made by the prosecution.

Most evidence is presented orally, and witnesses can be questioned by the prosecution, your lawyer, and the judge.

At the conclusion of the trial, both the prosecution and your lawyer will make closing speeches in support of their respective cases. You will then be given the opportunity to speak for yourself at the end of the trial.

(a) Do I have to be present?

As a general rule, you need to be present at your hearing. Otherwise, your trial will not take place, and it will instead be postponed. However, if you are facing a prison sentence of 6 months or less, you can consent to your trial taking place in your absence.

Your trial may also take place in your absence, if the court finds that you have deliberately abandoned it, or for very minor crimes.

(b) Can I ask for the trial to take place in my home country?

No.

(c) Is there a jury?

In most cases, you will be tried by a panel of one professional judge and two 'lay' judges.

However, for more serious cases, in which the prosecutor is asking for a prison sentence of 4 years or more, you can be tried by a panel of 3 professional judges and a jury. You will not be tried by a jury if you have been charged with (primarily) a drugs offence or a financial crime.

In cases where you have pleaded guilty, and in cases where you are only facing a fine, you will be tried by a single judge.

(d) Can my lawyer call and cross-examine witnesses?

Yes. Both your lawyer and the prosecution can call and cross-examine witnesses.

(e) I don't speak the language of the court, do I have a right to an interpreter? Is it free?

In criminal cases, an interpreter is provided, if needed, at no cost to you.

(f) Will the written evidence be translated for me?

You do not have right to have all evidence translated, but you can have important court documents translated, so that you can understand the accusations against you, and defend yourself.

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(g) Will the interpreter also help me if I need to talk to my lawyer?

You are entitled to seek the assistance of an interpreter to communicate with your lawyer at no cost to you.

(h) Why is the victim taking part in the trial?

Victims can take part in trials as witnesses. However, in certain cases, they may be assisted by a lawyer in order to claim compensation as part of the criminal proceedings.

(i) Will I be informed of the decision of the court on the day of the trial?

Most often, the court will inform you of its decision on the day of the trial. However, if the court considers it necessary, it may reach and inform you of its decision at a later stage, typically within a few days.

(j) Can I receive a copy of the judgment in my mother tongue?

You will probably need to have the judgment translated on your own request, and at your own cost. However, in cases concerning expulsion, the terms of the expulsion are typically translated and served upon you.

(k) I was tried in my absence and was not informed of this, what can I do?

If you have been tried in your absence, you will be notified of the judgment, and you can apply to have the case reopened.

Q9. I AM NOT HAPPY WITH THE DECISION, CAN I APPEAL AGAINST IT? HOW DO I APPEAL?

In most cases, you can appeal against the verdict and/or sentence in your case.

You can announce your intention to appeal when the decision in your case is handed down. You can also lodge your appeal in writing to the court that heard your case or the prosecutor within two weeks of the decision.

If you have been sentenced to a fine of 3,000 Kroner or less, you cannot appeal unless you have permission from the Appeals Permission Board (*'Procesbevillingsnævnet'*). Applications for permission also need to be lodged within 2 weeks of your court decision.

If you appeal against your conviction and not just your sentence, you will be entitled to a re-trial, where you may be able to introduce new evidence in support of your defence.

(a) **Do I need to pay my lawyer more money if there is an appeal?**

Yes, but the court covers the costs of your public defender, unless you are eventually convicted.

(b) **What is the time frame for the appeal to take place?**

There are no legal timeframes in which your appeal hearing must take place, but the court tends to prioritise cases involving applicants who are still in detention.

(c) **Could things get worse during the appeal? If I am acquitted, can the prosecution appeal?**

Things cannot get worse if you are the only one to appeal against the decision. However, if the prosecutor also appeals, there is a risk that you may end up with a worse outcome.

The prosecution has the right to appeal against your acquittal.

Q10. I HAVE EXHAUSTED ALL LEGAL REMEDIES. WHAT OPTIONS DO I HAVE?

(a) Is it possible to get my case reviewed?

If you have gone through all of the possible appeals, you can request to have your case reopened, if there are extraordinary circumstances, such as new evidence not available at your first trial.

(b) Can I apply for a pardon?

Yes, but pardons are granted only very rarely.

Q11. WHAT RIGHTS DO I HAVE AS A PRISONER?

(a) Do I have rights as a prisoner? Where can I find out about my rights?

Many convicted individuals serve their sentences in open prisons, with fewer restrictions on correspondence and visits. Prisoners serving longer sentences for more serious offences may start serving their sentence at a closed facility, and depending on their behaviour, they may be moved to open or semi-open facilities.

Prisoners are given basic rights, including the right to security, food, and contact with the outside world. You can speak to your social worker in prison for information about your rights in prison. The Prison and Parole Service also runs an anonymous telephone hotline that you can use to find out more about your rights. Your lawyer can also provide you some information on your rights.

(b) What can I do if my rights are violated? Where can I get assistance regarding my welfare issues, regarding abuse and mistreatment?

You should speak to your lawyer, in case s/he can help you in any way. You can also file a complaint with the Parliamentary Ombudsman, which may investigate the alleged violations and make recommendations to the Department of Prisons and Parole.

If you are not a Danish citizen, you can also let your consulate or embassy know about the violations of your rights, in case they can do anything to help.

Q12. CAN I GET MY SENTENCE REDUCED?

You can get your sentence reduced by appealing against it, but you may also be eligible for early release.

(a) What would help me get an early release?

As a general rule, if you have been sentenced to serve 3 years or more in prison, you can be released after serving two-thirds of their sentence.

You could however, be released earlier (for example, after serving half of your sentence) for good behaviour, and successful participation in rehabilitation programmes.

If you have been sentenced to life in prison, you are eligible for release after 12 years.

It is up to the Ministry of Justice, or the prison where you are staying to decide whether you should be released. If you are refused early release, you can appeal to the Department of Prisons and Probation.

(b) I have been sentenced to pay a fine, what will happen if I don't pay it?

If you have been sentenced to pay a fine, an alternative sentence will form part of the judgment. If you do not pay the fine, this alternative sentence (consisting of a specified prison sentence) will apply.

Q13. CAN I GO BACK TO MY HOME COUNTRY?

(a) Can I serve my prison sentence in my home country?

You may ask to be transferred to a prison in your home country, provided that there is an agreement between Denmark and your home country.

Please refer to our '*Prisoner Transfers*' note of advice for more information.

(b) Can I be expelled instead of serving my sentence?

You cannot be expelled instead of serving your prison sentence, but you may be expelled before completing your sentence. You can be expelled after serving half of your sentence, if your expulsion order bars you from re-entering Denmark for an indefinite period of time, or after 7/12 of your sentence, if you are prohibited from re-entering Denmark for a specified period of time.

(c) Is there a risk that I will be deported after serving my sentence?

You may be deported after serving your sentence, if this has been ordered by the court.

USEFUL LINKS

ORGANISATION	MANDATE	CONTACT DETAILS
LAW GOVERNING BODIES		
<p>Advokatsamfundet</p> <p><i>The Danish Bar Association</i></p>	<p>The Bar Association is the governing body for lawyers ('advokat') in Denmark, and works to promote their interests.</p> <p>The Bar Association has a disciplinary board, which hears complaints about individual lawyers.</p> <p><u>Languages:</u> Website available in Danish and English</p>	<p>Website: www.advokatsamfundet.dk</p> <p>Online directory of lawyers: www.advokatnoeglen.dk</p> <p>E: samfund@advokatsamfundet.dk</p> <p>T: +45 (0)33 96 97 98</p> <p>Kronprinsessegade 28 1306 København K</p>
LEGAL ADVICE		
<p>Københavns Retshjælp</p> <p><i>Copenhagen Legal Aid</i></p>	<p>Copenhagen Legal Aid is an organisation run by the Legal Aid board, which provides free and confidential legal advice for those who are eligible for legal aid. There are other similar organisations in other main cities and towns throughout Denmark</p> <p>Copenhagen Legal Aid can offer legal assistance with most types of cases, but it can only provide basic advice on criminal matters.</p> <p>As a general, for a single person to be eligible for legal aid, you need</p>	<p>Website: www.retshjaelpen.dk</p> <p>T: +45 (0)33 11 06 78 F: +45 (0)33 11 53 60</p> <p>Stormgade 20, 1. sal 1555 København V</p>

	<p>to be earning (as of January 2015) less than the equivalent of 304,000 Danish Kroner per year.</p> <p><u>Languages:</u> Danish and English</p>	
Advokatvagten	<p>Advokatvagten can provide quick, basic legal advice on a wide range of issues, including advice on legal aid, and on how to make complaints to relevant complaints bodies.</p> <p>Advokatvagten can only provide basic advice, but they cannot provide any legal representation.</p> <p>You do not need to be eligible for legal aid to receive assistance from Advokatvagten.</p> <p><u>Languages:</u> Danish and English</p>	<p>Website: www.advokatvagten.dk</p> <p>There are almost 80 offices throughout Denmark. You can find your nearest one by using the website: http://www.advokatvagterne.dk/find-din-advokatvagt#</p>
OMBUDSMEN		
<p>Folketingets Ombudsmand</p> <p><i>The Parliamentary Ombudsman</i></p>	<p>The Danish Parliamentary Ombudsman investigates made by individuals regarding public authorities, and issues criticisms and recommendations where s/he believes the public authority in question has exercised its powers and duties improperly. It cannot investigate complaints regarding court decisions.</p> <p>The Ombudsman also carries out visits to various institutions including prisons.</p> <p>If you wish to submit a complaint, this must be done within one year of the event that you are complaining about.</p>	<p>Website: en.ombudsmanden.dk</p> <p>E: post@ombudsmanden.dk</p> <p>T: +45 (0)33 13 25 12 F: +45 (0)33 13 07 17</p> <p>Gammeltorv 22 1457 København K</p>

	<p><u>Languages:</u> Complaints can be submitted in languages other than Danish. Website available in Danish, English, Arabic, German, Spanish, French, Russian, Turkish, and Urdu.</p>	
GOVERNMENT BODIES		
<p>Kriminalforsogen Danish Prison and Probation Service</p>	<p>Kriminalforsogen is the Danish government body responsible for enforcing criminal sanctions and for carrying out probation services.</p> <p>Confidential information about prison rules and your rights as a prisoner is provided through a telephone hotline.</p> <p><u>Languages:</u> Website available in Danish and English, Limited information is also available in other languages.</p>	<p>Website: www.kriminalforsogen.dk</p> <p>E: dfk@kriminalforsogen.dk</p> <p>T: +45 (0)72 55 55 55 (Anonymous hotline: +45 (0)70 26 04 06)</p> <p>Strandgade 100 1401 København K</p>
NGOs		
HUMAN RIGHTS		
<p>Institut for Menneske Rettigheder The Danish Insititute for Human Rights</p>	<p>The Danish Institute for Human Rights works to promote human rights in Denmark and abroad. In particular, they work to ensure local laws are compatible with international human rights standards, and to highlight issues of concern.</p> <p><u>Languages:</u> Website available in Danish and English</p>	<p>Website: www.humanrights.dk</p> <p>E: info@humanrights.dk</p> <p>T: +45 (0)32 69 88 88 F: +45 (0)32 69 88 00</p> <p>Wilders Plads 8K 1403 København K</p>

FAIR TRIALS

Our vision: A world where every person's right to a fair trial is respected.

THANK YOU

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For a full list of our funders see

www.fairtrials.org/get-involved/supporters/

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This note is intended to be for information purposes only and does not constitute legal advice. Take local legal advice on your specific situation.