

# CRIMINAL LAW IN DENMARK

FIFTH EDITION

LARS BO LANGSTED  
PETER GARDE  
VAGN GREVE  
THOMAS ELHOLM

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**Fifth Edition**

**Lars Bo Langsted  
Peter Garde  
Vagn Greve  
Thomas Elholm**

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## The Authors



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He was the chief editor of *Nordisk Tidsskrift for Kriminalvidenskab* (Scandinavian Journal of Criminal Law and Criminology) from 1981 to 1998 and *Juristen* from 1994 to 2006. He was a member of the *Standing Committee on Criminal Law* from 1996 to 2008.



Thomas Elholm, Professor in Criminal Law at the University of Copenhagen, who has brought the General Introduction, Part I and III up to date, was candidatus juris 1997 and was awarded a PhD (Law) in 2002 from the University of Copenhagen. He started his carrier as a principle at the Ministry of Agriculture. Later, in 2003, he became Lecturer, Senior Lecturer and Professor (2010–2018) in Criminal Law at the University of Southern Denmark, where he was also Head of Department and chairman of Academic Council. He was a visiting professor at Copenhagen Business School (2011–2012). His principal works to date are in the areas of criminal law, EU law, police law and human rights. Titles include *EU-svig. En studie i dansk strafferet*, *Politiets brug af skydevåben*, *8:11 Om bøder og proportionalitet i specialstrafferetten*, and co-authorship of *Grundlæggende EU-ret*, *Criminal Jurisdiction in the Nordic Countries*, *The Manifesto on European Criminal Policy*, *A Manifesto on European Criminal Procedural Law*, and *Kommenteret straffelov*. He has been a member of several public boards, etc., including the *Board of Police Complaints*, *Standing Committee on Research Policy* (Justice Dept.), *Committee on Legislation of Terrorism* (Justice Dept.) and *Standing Committee on Tax Law* (Tax Dept.). He was the chief editor of *Scandinavian Journal of Criminal Law and Criminology* (2011–2017); currently the editor of *European Criminal Law Review*.

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# List of Abbreviations

AJA	Administration of Justice Act
CC	Criminal Code
ECHR	European Convention on Human Rights
H	<i>Højesteret</i> (Supreme Court) judgment
HKK	<i>Højesterets Kæremålsudvalgs Kendelse</i> (Supreme Court decision)
MEDD	<i>Meddelelser fra landsforeningen af beskikkede advokater</i>
n.	Note
NTFK	<i>Nordisk Tidsskrift for Kriminalvidenskab</i> (Scandinavian Journal of Criminal Law and Criminology)
Para(s).	Paragraph
TfK	<i>Tidsskrift for Kriminalret</i> (journal of criminal law)
TfR	<i>Tidsskrift for Rettsvitenskap</i> (Journal of Legal Science)
UfR	<i>Ugeskrift for Retsvæsen</i> (The most important weekly law journal, containing most rulings from Supreme Court and many rulings from the High Courts as well as articles)
V	<i>Vestre Landsret</i> (Western High Court) judgment
VLK	<i>Vestre Landsrets Kendelse</i> (Western High Court decision)
Ø	<i>Østre Landsret</i> (Eastern High Court) judgment
ØLK	<i>Østre Landsrets Kendelse</i> (Eastern High Court decision)
ZStW	<i>Zeitschrift für die gesamte Strafrechtswissenschaft</i>

## List of Abbreviations

# General Introduction

## §1. THE GENERAL BACKGROUND OF THE COUNTRY

### I. Geography and Climate

1. The Kingdom of Denmark is situated in Northern Europe. It consists of Denmark (*Danmark*), the Faroe Islands (*Føroyar, Færøerne*) in the Atlantic Ocean, and Greenland (*Kalaallit Nunaat, Grønland*).

Denmark is a member of the European Union (EU), but the Faroe Islands and Greenland are not.

The geographic sizes of the areas in the Kingdom are Denmark at 43,098 km<sup>2</sup>, the Faroe Islands at 1,399 km<sup>2</sup>, and Greenland at 2,166,086 km<sup>2</sup>.

2. The Faroe Islands and Greenland have their own criminal codes, etc. The information below refers only to Denmark.

3. Denmark comprises the peninsula of Jutland (*Jylland*) and an archipelago of 407 islands mainly between Jutland and Sweden, including Zealand (*Sjælland*) and Funen (*Fyn*). Denmark's frontier with Germany extends 68 km across the Jutland peninsula. Denmark's coastline is 7,314 km. The state is, except for the German border, separated by sea from Germany, Sweden, Norway, and the UK. Denmark is flat; the highest point is 173 m above sea level.

4. Denmark has a moist and cool climate. The mean annual temperature is 8°C, the average for February being – 1°C and for July 17°C. The average annual rainfall is 610 mm.

### II. Population

5. The total population of Denmark in 2018 was 5.8 million with an average density of 134 (2018) inhabitants/km<sup>2</sup>. The capital, greater Copenhagen (*København*), has 1.3 million inhabitants. The population is distributed over 2.6 million households (2017). In 2018 there were 500,061 foreigners living in Denmark, this being 9% of the population. The largest groups of immigrants are from Turkey, Syria and Iraq (around 63,000, 41,000 and 32,000).

The life expectancy for men is 79 years and for women 83 years (2018).

The language is Danish, which is part of the Nordic subdivision of the Germanic group.

### III. Economy

6. The average pre-tax income for all persons aged 15 years and above was around Danish Kroner (DKK) 320,000 (EUR 43,000) in 2017.

Of all households, 57% owned their own dwelling (house or flat), 5% owned a summer cottage (2018). Average housing size for a household with two adults was around 135 m<sup>2</sup>. One of the highest in the EU. In 2018 there were 2.5 million cars registered in Denmark.

7. The gross national product for 2016 was DKK 2,100 billion (EUR 280 billion). This is equivalent to about EUR 48,400 per inhabitant, from infant to pensioner, only surpassed in the EU by Luxembourg and Ireland. Denmark has an inflation rate of 1%–3%.

Of the population, 1.5% are employed in the agricultural sector, 25% in trade and transport, and 32% in public administration, education and health sector.

Danish farmers are considered to be among the most efficient in the world. The Danish economy has traditionally been based on high quality agricultural products. Agricultural products and manufactured products of agricultural origin are still very important export goods, but machinery, etc. is the largest single export category. Danish business is dominated by small- and medium-sized companies.

8. The total burden of taxation is one of the highest in the world – 45% (2018).

9. Denmark is a welfare state. Medical and hospital treatment is free. Schools, high schools, and universities are free. Everybody who turns 67 years is entitled to an annual pension from the state.

### IV. Political System and Administrative Structure

10. The first trustworthy evidence of a kingdom in Denmark belongs to the early Viking period around 900. From 1660 to 1849 the king held absolute power. The liberal constitution of 1849 remains the core of the present 1953 constitution. The constitution is based on the principle of separation between the three powers of the state. Denmark is a constitutional monarchy. The Parliament (*Folketinget*) consists of one chamber with 179 members (including two members from the Faroe Islands and two from Greenland).

11. The franchise is held by all Danish citizens over 18 years of age. An election is held at least every four years; but the prime minister may call an election at any time. The most recent election took place in 2015. The distribution of seats is as follows of which 37% are women:

<i>Political Parties</i>	<i>Number</i>
Liberal Party	34
Social Democrats	46
Danish People's Party	37
Socialist People's Party	7
Conservative People's Party	6
Social-Liberal Party	8
Red-Green Alliance	14
Liberal Alliance	13
The Alternative	10
Faroe Islands	2
Greenland	2

The king or queen reigns, but does not rule. The executive power is exercised by a number of ministers, normally around 20–25 (at the moment, July 2018, nine of them are women).

12. The country is divided into ninety-eight municipalities (*kommuner*), five regions (*regioner*), and twelve police districts. Each municipality and region is headed by a council formed by local elections. Members of the councils are elected every four years.

## V. The Judicial System

13. Denmark, not counting the Faroe Islands and Greenland, is divided into twenty-four jurisdictional districts in the first instance (*byret*). There are two High Courts (*landsret*), namely, the Eastern High Court (*Østre Landsret*) and the Western High Court (*Vestre Landsret*), functioning as courts of appeal except for a number of very big or important civil cases, especially cases where the Government is a party. The Supreme Court (*Højesteret*) covers the whole realm. Lay judges participate in many criminal cases, though never in the Supreme Court. The Maritime and Commercial Court in Copenhagen deals with cases, mainly civil cases, where expertise of maritime or commercial questions are of the essence.

## §2. CRIMINAL LAW, CRIMINAL JUSTICE, AND CRIMINAL SCIENCE

**I. Definitions of Criminal Law***A. Criminal Law*

14. The criminal or penal law of Denmark is that branch of public law that relates to offences (criminal offences) that may be subject of specific proceedings (criminal proceedings) instituted for the infliction of specific sanctions (penal sanctions).

In its broadest sense, Danish criminal law can be described as a set of legal rules defining the cases and under which conditions the State may impose penal sanctions – punishments or measures of security or other legal consequences of a punishable act – on the offenders of its regulations, what these sanctions consist of, and in which manner the State may exercise its right to inflict the penal sanctions.

15. Criminal law consists of substantive criminal law, procedural criminal law, and law of the enforcement of criminal sanctions.

*B. Substantive Criminal Law*

16. Substantive criminal law, often called ‘criminal law’ as such, is to a large extent concerned with the general principles related to the conditions that must exist to define an act or omission as a criminal offence. It deals with the definitions of the various criminal offences and includes the regulations concerning the persons who are punishable for criminal offences and the sanctions that may be imposed on them.

These principles and regulations can mainly be found in the Danish Criminal Code from 1930 (*straffeloven, strl.*). Most parliamentary acts outside this Code however, also contain provisions criminalizing non-compliance.

17. Danish criminal law is not subdivided. For example, there is not a special administrative criminal law. Neither is there a distinction between felonies, misdemeanours, and contraventions. All offences are in principle treated in the same way, irrespectively of whether it is a question of a serious crime, a minor breach of the road traffic act or an offence against an administrative law, for example, regarding the environmental or fiscal interests. Thus, the term ‘crime’ and ‘criminal offences’ can be used interchangeably with regard to all acts and omissions that entail liability to punishment.

*C. Criminal Procedure*

18. Procedural criminal law contains rules concerning the organization of the courts, the prosecution, the police, and the bar, furthermore the investigation – mainly the regulation of means of enforcement – prosecution, trial, and appeal in cases concerning criminal offences.

The area is largely, although not completely, regulated by the huge – with its more than 1,000 sections by far the longest Danish act – Administration of Justice Act or AJA (*retsplejeloven, rpl.*) of 1916, in force from 1919, covering both civil and criminal cases. The most important principles governing the act at its inception were that sittings in court were henceforth to be largely oral and public; also, juries were introduced in serious criminal cases. The most salient later developments in the field of criminal justice are the introduction of lay judges in 1936 (and consequently weakening of the jury) and during the last generation the more stringent regulation of the means of investigations.

#### D. Sanction Enforcement

19. The Danish administration has up until recently been only marginally regulated by parliamentary acts. This is true both as for the general rules as well as for the regulations of specific areas of public administration. But in 1999 a Corrections Act (*straffuldbyrdelsesloven, sfbl.*) was passed, which established the rules for prisoners' service of custodial sentences and for enforcement of some other sanctions (*inter alia*, probation, community service, and security detention). This is administered by a special administrative body, the Department of Prisons and Probation (*see* paragraph 24 *infra*).

## II. Overview of the Criminal Justice System

### A. The Police

20. Historically, the chief constables (*politidirektør*) of the individual police districts had a high degree of independence, but since 1938, when the responsibility for the Danish police was removed from the municipalities to the state, the National Commissioner of Police (*rigspolitichefen*) gained wide powers especially over the allocation of means and manpower. Since 2009, the structure is hierarchical with the National Commissioner as head and the chief constables retain operational independence with some specialized departments being directly responsible to the National Commissioner. The Ministry of Justice is politically responsible for the police. (For details, *see* paragraph 271 *infra*.)

The overall man power of the Danish police is around 16,000 men and women of which approximately 10,800 are uniformed personnel, 2,600 are clerical staff, 700 are legal staff, which includes the chief constables, their deputies, etc., and the National Commissioner of Police; this is around 530 inhabitants per (uniformed) policeman with about a quarter of the force stationed in Copenhagen.

### B. The Prosecution Service

21. A distinct peculiarity of the Danish system is that the police and the prosecution are integrated. At the police district level, the Chief Constable is head of the

prosecution service. On the regional level, the regional prosecutor (*statsadvokaten*) deals with appeals to the High Courts and (to some extent) with jury cases (first instance). The Director for Public Prosecution (*rigsadvokaten*) is head of the prosecution service. (For details, *see* paragraphs 270 et seq. *infra*.)

### C. Investigating Judges and Investigating Jurisdictions

22. Denmark has no specialized investigating judges, such as the *juge d'instruction*. The normal trial judge is functioning when the court is drawn into the investigation. (For details, *see* paragraph 270 *infra*, also Part II *passim infra*.)

### D. Trial Jurisdictions

23. Just as there is no functional division between the investigating judge and the trial judge, the Danish system of criminal (and civil) courts at the trial stage is simple and unitary. The system known in other countries of separate police courts, correctional courts, assize courts, etc., is unknown in Denmark, where the same judge is empowered to deal with all cases, civil or criminal. (For details, *see* paragraphs 263 et seq., 386 and 414 *infra*.)

### E. Prison and Probation System

24. The total correctional service, which is under the charge of the Ministry of Justice, consists of the Department of Prisons and Probation, thirteen prisons, and thirty-six local gaols as well as seven half-way houses. The enforcement of decisions concerning commitments to hospital for mentally disordered persons or their inclusion under the care of the mentally handicapped as well as measures for young persons below 15 years of age (the age of criminal responsibility) falls outside the scope of the Department of Prisons and Probation.

Some of the prisons are 'closed', that is, they are surrounded by an external ring wall, and they have secured buildings, combined with a relatively dense staff-inmate ratio. The largest prisons have each around 200 inmates; the Copenhagen gaol (divided into smaller units, placed on different locations) around 550.

In Denmark, it is normal practice that inmates are placed in open prisons without ring walls, etc. Only when special reasons prevail are they placed in closed prisons. The prison capacity, including gaol, normally varies between 3,700 and 4,200. Open prisons have a capacity of around 1,100 and closed ones of around 900 (gaols around 1,600) in 2017.

The prison staff to prisoner ratio is 1:1.1 in the prisons, lower in the gaols. The average number of prisoners normally varies from year to year. For many years it has been between 3,500 and 4,200. The utilization of the capacity normally varies between 90% and 103% (depending on the prison).

25. The Department of Prisons and Probation is also responsible for carrying out supervision of persons subject to suspended sentences, parolees, etc. The staff to client ratio is 20:1.

The probation work is based on four fundamental principles: the principle of early assistance to ensure that the probation officer enters the case as early as possible; the principle of proximity, the aim of which is to have a short geographical distance between the client and the probation officer and between the inmate and her/his family; the principle of continuity in order to reduce the number of breaches of contact in the probation work; and the principle of coordination, which emphasizes the necessity of cooperation between the prison and probation system and the local social welfare systems.

#### F. The Bar

26. An attorney or lawyer (*advokat*) must have an authorization from the Ministry of Justice (AJA section 119), and only a person thus authorized is entitled to use the title *advokat* (AJA section 120). The applicant must be of age and may not have been placed under legal guardianship (e.g., on grounds of insanity); may not have been declared bankrupt; must have a Danish legal degree – the exceptions: citizens of other Nordic countries and the complex question of the impact of the EU not being treated here; most important, he must have three years' postgraduate training, typically as an attorney's legal clerk, although other kinds of legal work, mostly in the courts or at the prosecution service, may also meet the condition; and passed the bar exam. A former criminal conviction may in some cases impede the application (AJA section 121). An attorney convicted of a criminal offence may by the same sentence be disbarred (AJA section 138 and Criminal Code section 79), and will also be disqualified, for example, following bankruptcy (AJA section 137). There are supplementary conditions before an attorney may plead in a High Court or the Supreme Court (AJA sections 133–134).

All attorneys are subjects of an appointed board (*Advokatnævnet*) that has disciplinary powers, including the right to impose a fine up to DKK 300,000 (approximately EUR 40,000) and to disqualify the culprit (AJA section 147c). The decisions of the Board may be appealed to the ordinary courts (AJA section 147d). The Board consists of three judges as chairman and vice-chairmen, nine attorneys, and nine other members (AJA section 144). Disputes as to the fee demanded by an attorney may also be referred to the board (AJA section 146).

As for attorneys as defence counsel, see paragraphs 281 et seq. *infra*.

#### G. Statistical Overview

27. The most recent police statistics (2016) indicate that 401,407 offences against the Criminal Code were reported to the police. By far the majority of these offences are all types of property crimes (ca. 90%). Around 20% of all reported crimes concern theft of bicycles and cars. Sexual offences and crimes of violence make up, respectively, 1% and 6% of all reported crimes.

28. The clear-up rate for property crime is around 18%. However, this figure is strongly influenced by an extremely low clear-up rate for the bicycle thefts (and use theft) of around 1%. For sexual offences the clear-up rate is 60% and for crimes of violence 62% (72% for murder).

29. In 2016, a total of 5,715 suspects were imprisoned (on remand); the daily average number of imprisoned suspects was around 1,100.

30. Denmark applies a rather high number of prison punishments, 9,603 (suspended) and 8,376 (unsuspended) in 2016. But the periods of time spent in prison are comparatively very short: Prison sentences are three months or less for more than half of the cases. The average number of months sentenced (unsuspended imprisonment) in 2016 was 8.5. Only around 5% impose more than two years of deprivation of liberty, and no more than 2% concern five years or more. Therefore, the number of prisoners on an average day is 62 per 100,000 inhabitants, which is a rather low number in Western Europe (2016).

31. In 2017, a total of 2,826 convicted persons applied for permission to serve their sentence at home under electronic surveillance (electronic foot-chain). There were 2,107 permissions granted with only 239 permissions revoked and the convicts transferred to imprisonment.

32. There are more than 500,000 fines a year, mainly for traffic offences.

### §3. THE HISTORICAL BACKGROUND

#### I. Christian V's 'Danish Law' of 1683

33. The first Danish Criminal Code was contained in the sixth book of Christian V's 'Danish Law' of 1683 (*Christian den 5.s Danske Lov*). Book six was the first attempt at any systematic arrangement of the criminal law of Denmark. However, once it has been said that book six was significant as a unifying text, the admiration has to stop; as far as the content of the laws was concerned, the 1683 Criminal Code was a disappointment. Instead of building on the reforms that had been creeping into the administration of criminal justice in general and creating a new Criminal Code, the authors were content with mere consolidation of the existing penal laws, many of which were already obsolete. Thus, there was no attempt to hasten the process of centralization that was started by the absolute monarchy and to transfer the prosecution of criminal cases to the exclusive authority of the officials of the king. Instead the code built on the old system of private prosecution and the right of injured parties to collect fines from convicted persons was continued. Only in one respect did 'Danish Law' represent a considerable improvement, this being that all men were regarded as equal before the law, so that the distinction found in the older legislation between the judgment of noblemen and commoners for breaches of the same law was abolished.