

Consolidated Act no. 1001 of 5 October 2006

Consolidated Administration of Justice Act

EXTRACT

Part 50

Forced sale of property

544.-(1) Announcement of auction of executed property shall be no less than one week before the auction is to be held, cf. however, section 556. It shall be inserted at least two times in one or more widely read local periodicals so that the first announcement is with the notice mentioned above and the second is one of the days closer to the auction. The auction shall also be announced on posters and in public proclamations to the extent this is usual practice for voluntary auctions at the auction premises. The first announcement of auction of ships which are not covered by subsection (2) shall, however, be no less than two weeks before the auction is to be held and there shall also be an announcement in the Danish Official Gazette with the same notice.

(2) Auction of ships registered in the Royal Danish Register of Shipping, aircraft registered in the Danish register as well as ships and aircraft registered in corresponding foreign registers shall be announced no less than six weeks in advance in the Danish Official Gazette and, pursuant to an order by the bailiff's court in one or more other periodicals, and notified to the relevant registration authority. Such notification shall also be given for auction of claims for freight linked to the registered ship. If the auction is of a ship or aircraft registered in a foreign state, the auction shall also be announced at no less than one month's notice at the place at which it is registered pursuant to the regulations on public announcement of forced sales applicable at said place. At the same time as the application for auction, the plaintiff shall submit a certified transcript of the Danish or foreign register containing information on the registered rights resting upon the ship or aircraft. At the same time as the first announcement, the bailiff's court shall, by registered letter, possibly by airmail, notify the owner and holder of the rights mentioned about the auction, if their addresses appear in the register. Corresponding regulations shall apply for auction of stocks of spare parts mortgaged in connection with an aircraft.

(3) For auction of mortgaged claims, the mortgage holder, debtor and guarantors, as well as any other person whose rights or obligations with regard to the claim may be deemed to be affected by the sale, shall be notified about the auction, if the person in question has a known residence in Denmark, cf. section 154. Decisions to waive notification shall be invalid.

545. – 550. (Regarding announcement and initiation etc. of auctions)

551.-(1) (Regarding the internal position of execution holders in the forced sale)

(3) For auction of registered ships or aircraft, sale may only take place provided that the charges documented for the bailiff's court as ranking prior to execution holders are covered by the auction sum or, to the extent he is so entitled, taken over by the buyer.

552. When the auction is held pursuant to the above regulations, its outcome shall be binding for all persons whose rights in the items sold, under civil law as well as the provision of section 551, lapse on the forced sale.

553. (Regarding collection of the auction price)

554.-(1) The bailiff's court shall, without undue delay, pay the auction plaintiff the part of the auction price due to him and shall release any remaining amount to the debtor unless others have notified claims to the bailiff's court for participation in the proceeds of the auction, or claims appear in the Land Registry, in which case an extract herefrom shall be procured, or the bailiff's court learns in some other way, such as explanation by the debtor, that such claims exist.

(2) In this case the bailiff's court shall compile a draft for distribution of the auction sum between all the relevant persons according to the nature of their rights.

555.-(1) The bailiff's court shall, without delay, notify separately (section 154) each of the persons dealt with in the previous section, who have a known residence within the Realm, that the draft has been submitted for inspection at the bailiff's court office. If any of the persons mentioned do not have a known residence within the Realm, for their part public summons in the Danish Official Gazette shall be adequate, unless they appeared when the execution was levied or the bailiff's court has been notified by a proxy resident in the Realm, in which case notification should be to such person.

(2) If no objections to the draft by the bailiff's court are put forward within four weeks after the notification or after the announcement, distribution of the auction price shall be initiated as soon as it has been received in accordance with the draft, without, however, any person's rights otherwise being hereby precluded. In the event that the distribution is disputed and the bailiff's court is unable to arbitrate agreement between the parties, the bailiff's court shall settle the dispute by court order. If the dispute relates to distribution of the auction price for sale of a ship or aircraft, the bailiff's court shall, however, if arbitration by the court is unsuccessful, refer the parties to ordinary legal proceedings. Objections to the distribution which are not pursued appropriately within 14 days shall be deemed void.

(3) That part of the auction sum which is not under dispute shall be paid in accordance with the draft; but that part which is under dispute shall be retained until the case is finally decided. (.....)

V. The preliminary remedies

Part 56

Arrest

627. The bailiff's court may carry out arrest for security of monetary claims, when

- 1) it is not possible to levy execution for the claim, and
- 2) it is deemed that the possibility to attain cover later will otherwise be significantly impaired.

628.-(1) Arrest may not be carried out when it is deemed that the claim does not exist.

(2) Arrest of aircraft, foreign state ships and ships' cargoes which belong to foreign states, may only be carried out pursuant to the relevant regulations in other legislation.

(3) Cases on arrest of ship in which the ship is prohibited from sailing for security of a claim under maritime law shall be dealt with pursuant to the regulations of part 4 of the Merchant Shipping Act.

Part 57

Prohibition

641.

(3) With regard to aircraft, foreign state ships and ships' cargoes which belong to foreign states, prohibition may only be applied pursuant to the regulations in other legislation.

652. The regulations on arrest shall be applied if an application for prohibition is submitted against payment of a claim, a ship sailing, or moving an object or exercising in some other way the availability of the object, and the purpose of this is to obtain security for full payment of a claim.

Part 62

Jurisdiction

686.-(1) Criminal cases shall be heard in the first instance by the district courts.

(2) Lay judges shall sit in criminal cases where there are questions of higher penalties than fines or where it is otherwise deemed to be of exceptional significance for the defendant or of special public interest, unless otherwise is consequential upon subsections (3) and (4). Lay judges shall also sit if required by the regulations in other legislation.

(3) Lay judges shall not sit in

- 1) criminal cases pursuant to section 831,
- 2) criminal cases heard with the assistance of experts pursuant to section 20 b(1), and
- 3) the cases mentioned in section 60(1), no. 3, and section 66(4) of the Criminal Code regarding conditional discharges.

(4) Juries shall sit in

- 1) criminal cases in which there is a question of penalty of imprisonment of four years or more, to the extent that this is not a consequence of a question of setting a concurrent sentence pursuant to the regulations of section 40(1) and section 61 of the Criminal Code,

- 2) criminal cases in which there is a question of a judgement of assignment to an institution pursuant to section 68 of the Criminal Code or a judgement of commitment or custody pursuant to section 70 of the Criminal Code, and
- 3) criminal cases regarding political violations of the law.

(5) Juries shall not sit in

- 1) criminal cases regarding violation of sections 172, 173, 191, 286, 289 or 290 of the Criminal Code, unless the case includes other violations of the law which, pursuant to subsection (4) shall be heard and determined with a jury sitting, and
- 2) the criminal cases mentioned in subsection (4), no. 1 proceeding pursuant to section 831.

687.-(1) Defendants may decide that a criminal case which is to be heard with a jury sitting pursuant to section 686(4) shall be heard with a lay judge sitting instead, cf. however, subsection (4).

(2) The decision of the defendant shall be made at a hearing or notified to the court in writing. The notification shall state that the defendant has been able to discuss the matter with his counsel. If the defendant has not chosen counsel himself, the court shall appoint a defence counsel for the defendant before the defendant decides that the case is to be heard with a lay judge sitting. The decision shall be notified no later than 14 days after the indictment has been served to the defendant. The court may extend this time limit on application from the prosecution or the defendant.

(3) The defendant may not withdraw a waiver of hearing with a jury sitting once the waiver has been notified to the court. The defendant's waiver shall also apply for hearing the criminal case under appeal.

(4) For concurrent proceedings against several co-defendants for one or more crimes, a defendant may not decide with respect to himself that the case is to be heard with a lay judge sitting pursuant to subsection (1), unless, either all the defendants make a decision pursuant to subsection (1), or the prosecution consents to such a hearing with respect to the relevant defendant.

688. (Repealed)

689.-(1) Decisions with respect to appeals against judgements, orders and decisions in criminal cases by the district court shall be heard by the High Court.

(2) Juries shall sit in criminal cases where the decision of the district court is made with a jury sitting and where the appeal relates to the assessment of the evidence for the guilt of the defendant.

(3) Lay judges shall sit in

- 1) criminal cases where the decision of the district court is made with a jury sitting and where the appeal does not relate to the assessment of the evidence for the guilt of the defendant,
- 2) criminal cases where the decision of the district court is made with lay judges sitting, and
- 3) criminal cases where, for the High Court, there is a question of a higher penalty than a fine or where it is otherwise deemed to be of exceptional significance for the defendant or of special public interest.

(4) Lay judges shall not sit in

- 1) criminal cases heard with the assistance of an expert pursuant to section 20 b(2), and
- 2) the cases mentioned in section 60(1), no. 3, and section 66(4) of the Criminal Code regarding conditional discharges.

690.-(1) All decisions with respect to appeals against judgements, orders and decisions in criminal cases by the High Court shall be determined by the Supreme Court.

(2) Juries and lay judges shall not sit at trials of criminal cases before the Supreme Court, cf. section 3.

691.-(1) The court shall review for itself whether it has jurisdiction to hear the criminal case and whether lay judges or a jury shall sit during the hearing. If the main hearing with lay judges or jury sitting has commenced, notwithstanding that case should have been heard without these, the court may decide that the lay judges or jury shall continue to sit.

(2) Decisions whereby an application for hearing of a criminal case before lay judges, a jury or with assistance from experts is refused may be appealed.

692-693. (Repealed)

Part 63

Jurisdiction and combination of criminal cases

697. The jurisdiction of the scene of the crime for crimes committed outside the territorial waters of the Realm on board Danish ships, or by persons attached to such ships shall be deemed to be the court in whose district the ship arrives to discharge or load on its return to the Realm.

698.-(1) The following may be heard by the court in whose district the accused lives or, if he does not have a residence in the Realm, is staying at the commencement of proceedings, or, if he is not present in the Realm, in whose district he last had a residence or stayed:

- 1) crimes admissible in the Danish courts, which are committed outside the borders of the Realm,
- 2) violations of the law which are not heard and determined with jury or lay judges sitting,
- 3) other crimes in the absence of such information as determines application of section 696.

(2) Danish officials employed abroad who are not subject to the jurisdiction of the country in question and persons belonging to the Danish legations in foreign states shall be deemed to be resident in Copenhagen for the purposes of the above regulations to the extent that they have not maintained a residence at some other place in the Realm. The same shall apply for other Danish subjects who may not be sued in the country in which they are resident.

(3) The Minister for Justice shall decide at which court crimes committed outside the Danish state by persons who either have or have had residence in Denmark are to be tried.

699. In the circumstances mentioned in section 698, the case may also be tried by the court in whose district the accused was arrested.

699a. Cases covered by section 20b(1) and which are linked to an incident which has been subject to a maritime inquiry may be tried before the court for which the maritime inquiry was held.

705.-(1) Concurrent proceedings against the same accused for several crimes or against several accused involved in one or more crimes should be under one case, if this is possible without significant moves or difficulties.

(2) If a criminal case covered by section 20b(1) is combined with a jury case, the case shall be heard in its entirety as a jury case. If a criminal case covered by section 20 b(1) is otherwise combined with a criminal case which is not covered by section 20b(1), experts shall assist pursuant to section 20b(1), if the crime which has given rise to the proceedings is covered by section 20b(1). The court may, however, decide that there shall be a separate hearing of that part of the case which is covered by section 20b(1), if the combination is not considered appropriate.

Part 65

The prosecution

718. The courts may only act within the area of criminal justice on application by the prosecution or a private person entitled to take legal proceedings.

719.-(1) Public prosecution shall be by the Commissioner of Police, unless otherwise stated in this Act or regulations laid down in pursuance of this Act.

(2) The Regional Prosecutor shall prosecute

- 1) criminal cases heard by the district court with a jury sitting or with lay judges sitting as a consequence of a decision by the accused pursuant to section 687,
- 2) cases on appeal to the High Court, and
- 3) cases on violations of the provisions of parts 12 and 13, sections 127-129a, section 132a, section 136(2), section 137(2), section 140, section 141, part 16, section 158, section 160, section 180, section 183(1) and (2), section 183a, section 186(1), section 187(1), section 192b(1)-(3), sections 237-240, section 261(2), section 266a and section 266b of the Criminal Code.

(3) The Minister for Justice shall otherwise lay down more detailed regulations on the division of responsibilities regarding the prosecution between the Regional Prosecutors and the Commissioners of Police.

720.-(1) The Minister for Justice may stipulate that public prosecution in specific cases shall be determined by decisions by the Minister for Justice or the Chief Public Prosecutor.

(2) If public prosecution pursuant to the legislation is determined by an application, prosecution may only take place provided said application is submitted by a person duly entitled pursuant to section 725. A report from the entitled person shall be deemed to be an application for public prosecution, unless otherwise stated in the report. In the event that private prosecution has commenced, public prosecution may not be applied for. The prosecution may refuse to comply with an application for public prosecution which excludes any possible accessory from the prosecution. If the application only relates to some of the guilty parties, without excluding possible accessories, the prosecuting authority may extend the prosecution to said guilty parties, unless the person so entitled, after having had occasion to make a statement, opposes this. In such case, the 3rd clause shall apply.

(3) The Regional Prosecutor and the Commissioner of Police may, notwithstanding the provisions of subsections (1) and (2) carry out urgent actions when the circumstances are deemed to be unknown to the person who can decide or apply for prosecution, and the circumstances make it probable that prosecution will be decided or applied for. If an application is withdrawn pursuant to subsection (2) before judgement is passed, the prosecution shall cease, unless the prosecution deems that general considerations require that the prosecution be continued.

722.-(1) Charges in a case may be fully or partly dismissed when,

- 1) the intended offence may not, pursuant to legislation, incur a higher penalty than a fine and the circumstances are of insignificant culpability,
- 2) pursuant to section 723(1), conditions are stipulated that the accused shall be subject to assistance measures pursuant to section 40 of the Social Service Act (*lov om social service*),
- 3) the accused was less than 18 years of age at the time of the crime and conditions have been stipulated pursuant to section 723(1),
- 4) section 10b or section 89 of the Criminal Code applies, when it is deemed that no, or only insignificant penalty will be imposed and that a conviction will not otherwise be of significance,
- 5) completion of the case will involve difficulty, costs or processing time which is not in reasonable proportion to the significance of the case and the penalty which may be expected to be imposed,
- 6) the legislation contains special authority to dismiss the charges, or
- 7) this is consequential upon provisions laid down by the Minister for Justice or the Chief Public Prosecutor.

(2) In other cases, charges may only be dismissed if there are particularly mitigating circumstances or other particular conditions and general considerations mean that prosecution is not deemed necessary.

(3) The prosecution may dismiss charges pursuant to subsection (1), while a decision to dismiss charges pursuant to subsection (2) shall be by the closest superior prosecution.

723.-(1) In order for charges to be dismissed,

- 1) the accused shall agree to pay a fine or participate in confiscation, and

2) the same conditions shall apply as for conditional discharges.

(2) Conditions may only be stipulated provided, in the court, the accused has issued an unconditional confession to the court and the accuracy of this is reinforced by other circumstances.

(3) The conditions shall be stipulated by the authority with access to dismiss the charges. The conditions shall be approved by the court.

(4) If the conditions are violated, the case may be reopened.

724.-(1) When it is decided to cease public prosecution, the accused and others who are deemed to have a reasonable interest shall be informed. When a charge is withdrawn, the accused shall be informed. A decision to cease prosecution proceedings may be appealed to the superior prosecution pursuant to the regulations of part 10. According to the same regulations, the accused may appeal against a decision to dismiss charges.

(2) In the event that it is decided to cease prosecution proceedings or dismiss charges, prosecution against the accused may only continue in accordance with a decision by the superior prosecution, if notification is served to the person in question within two months of the date of the decision, unless the conditions of the accused have prevented serving the notification in due time or the conditions for reopening pursuant to section 975 are present.