

10486/83

B. The Government

71. As a result of tradition, Danish courts of first instance operate in relatively small jurisdictions. This helps to create confidence between the court and the local population. Another result of tradition is that the local court is empowered to deal with all kinds of cases, criminal and civil. This judicial system means that normally the judge in charge is one and the same person both during the preliminary stage and during the concluding trial. However, the division found in a number of European countries into so-called investigating judges and so-called trial judges is unknown in Denmark. In small rural jurisdictions the fact that one and the same judge handles the case at the initial stage as well as during the trial is the inevitable consequence of having only one judge in the respective jurisdiction. However, this set-up for the courts in Denmark should be seen in connection with the function of Danish courts in the criminal procedure.

72. The preliminary investigations conducted in Denmark serve a dual purpose, that is to provide all the information required to determine whether the accused should be indicted, and, if so, to collect material to clarify the choice of penalty. The investigation in criminal cases is conducted by the police under the supervision of the prosecuting authorities. Ordinarily, courts do not enter a criminal case in the investigative phase.

73. If, however, in the course of the investigations, a dispute arises between police and counsel over the powers etc. of the police or counsel, the matter shall be taken to court for its decision. The services of the court may also be needed in the investigative phase if either the prosecuting authority or the defence requests that evidence should be taken in camera at the initial stage because it is feared that the evidence will otherwise be lost before the trial.

74. Furthermore certain investigative measures are deemed to involve such severe interference with citizens' rights that they can only be taken by court order. This means that, as a general rule, measures such as search, telephone tapping, seizure and detention on remand can only be imposed if a court, after hearing the arguments and counter-arguments of the parties, finds the contemplated measure justifiable. Also decisions concerning commissions rogatory under the European Convention on Mutual Assistance in Criminal Matters are usually taken by the court at the request of the police.

75. Reference to court of such questions is motivated by the wish to have an impartial authority appraise whether the police should be permitted to take enforcement measures as suggested. In this manner the court ensures that the relevant provisions of the Administration of Justice Act are observed.

76. While investigations are under way the court plays a completely neutral, supervisory role. It takes no initiatives on its own and acts only at the request of the police or counsel, and only if there is disagreement between the two or if the police contemplates applying such onerous measures as mentioned above.

