

## DENMARK

### 1. Delegations are invited to provide information on any domestic legislation existing on this particular issue.

There is no direct statutory regulation of immunity of foreign representatives in Danish law.

In regard to criminal jurisdiction, Section 12 of the Danish Penal Code (*Straffeloven*) provides that the provisions regarding jurisdiction of Danish courts "shall be restricted by the exceptions recognised under international law." This includes both customary and conventional immunities.

With regard to civil suits, there is no equivalent provision in the Administration of Justice Act (*Retsplejeloven*). However, according to Danish legal doctrine, all Danish administrative bodies and courts are required to interpret domestic law in compliance with Denmark's international obligations. Accordingly, Danish law must be interpreted in compliance with international law, even where the meaning of a statute *prima facie* seems to be at variance with the relevant international obligation. As a matter of constitutional theory, it is only where Parliament clearly intends to override an international obligation that the principle of compliant interpretation may be abandoned. Thus, the doctrine of compliant interpretation enables Danish courts to consider issues of immunity.

In addition to the above, the Minister of Justice may under certain specific circumstances, as set out in the Danish Administration of Justice Act, instruct the prosecutorial authorities not to initiate prosecution in criminal cases.

### 2. Delegations are invited to inform the Committee as to whether there are any other means for the Ministry of Foreign Affairs of communicating information to national courts and how the Ministry of Foreign Affairs perceives the scope of international legal obligations in [this] field.

The Administration of Justice Act enables the Ministry of Foreign Affairs, and other public authorities, to intervene in civil suits. Section 252(2) of the Administration of Justice Act reads as follows:

A third party who has an interest in the outcome of a civil case may intervene in support of a party.

Where the decision of the legal issues is of significant importance for the Government's treatment of the same issues or similar issues, such offices may intervene in the case where it can be done without substantial detriment to the proceedings... [Unofficial translation]

Furthermore, the Danish Ministry of Foreign Affairs generally provides other organs of the executive branch with legal advice on international law. Such advice may be used in both civil and criminal proceedings. This provides an avenue of communication from the Ministry of Foreign Affairs to national courts.

### **Are there any information related to international legal obligations contained in the legislative preparatory works of domestic laws on immunities?**

White Paper No. 1488 of on Danish Penal Jurisdiction (*Betankning nr. 1488 om Dansk straffemyndighed*) considers the above-mentioned Section 12 of the Danish Penal Code (Section 13.2.1).

**Are there any directives, guidelines or circulars that have been issued on this subject?**

The Attorney General (*Rigsadvokaten*) has issued guidance on the handling of transgressions of the law by foreign representatives (*Om lovovertrædelser begået af ekterritoriale*, RIS Aug/92 1954)

The police commissioner (*Politidirekter*) has issued guidance on foreign representatives' immunity from enforcement (*A-meddelelse nr. 11. Juni 2004*).

- 3. Delegations are invited to precise whether there are any prohibitions or stated limits in domestic law, which would prevent the transmission of information to national courts by the Ministry of Foreign Affairs. In this regard, are there, in your domestic legal order, any relevant legislation or national practices (any reference of case-law would be appreciated)?**

Other than the general principle of the separation of power (Article 3 of the Danish Constitution), there are no prohibitions or stated limitations in Danish law that prevent the transmission of information to national courts by the Ministry of Foreign Affairs.

- 4. From a broader perspective, delegations are called upon to express their views as to whether the Ministry of Foreign Affairs can communicate with Parties engaged in procedures before national courts and, if so, as to how it can proceed. In particular with regard to:**
- the principle of equality of arms (e.g. does the communication with one Party implies informing the others about the content of that communication?).
  - the scope of the communication (e.g. communication of possible factual elements or communication restricted to a single point of law).
  - the principle of independence of Judiciary.
  - any other related issue.