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The Surveyors' Tribunal

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Introduction

The 1963 Act of Surveyors set up an independent three-person Tribunal in Denmark to try claims from the public about the licensed surveyors' work. The license gives surveyors monopoly on cadastral work and the Tribunal is supposed to be society's quality controller together with the courts and the complaint boards of the Association of Surveyors.

This paper explains how the Tribunal functions, what tasks it deals with, which judgements are at their disposal and discuss if the Tribunals field is following the public opinion and the development in morality of society. It appears that complaints on licensed surveyors increasingly aim at ethically problems, and the author comes to the conclusion that society's acceptance of the Tribunals quality control, first depends of acknowledgement and respect from Surveyors industry to the disciplinary institution.

What are the tasks of the licensed surveyors?

The Surveying profession, in the major part of Denmark is run by self-employed licensed surveyors. Terms of license and the more important regulations on the surveying industry are laid down in the Act of Surveyors.

The basic field of surveying is the cadastral work of which the surveyors in Denmark are monopolized according to the Act of Surveyors and the Act of Subdivision. The definition of cadastral work is determination and marking measuring of property boundaries, and preparation of documents needed for updating the cadastral register and maps. Besides the definition also include the licensed surveyors judgement of boundary disputes. We also monopolize the Danish surveyors in a few other fields of work that particularly concerns the creation of condominiums and certain certificates of them.

Besides the monopolised work, surveyors' field comprises a wide range of tasks. E.g. out marking of buildings, real property consulting, land consolidation, spatial planning, mapping and geographic information.

Surveyors only form a small industry in the society. As of 1 January 1997, 213 licensed

self-employed surveyors, employed 104 licensed surveyors. The major group of surveyors comprise 500 persons that do not work in the licensed surveying industry, they run other business, or are employed in another industry.

How to get licensed in Denmark?

The Act of Surveyors lay down the following terms for surveyors to obtain license. He or she must:

1. be a Danish subject,
2. be of age and not be under guardianship,
3. not having declared suspension of payments and not been declared bankrupt for the time being,
4. have graduated from the University of Aalborg (M.Sc) as a surveyor,
5. at least for three years after graduation during employment in private practice have worked with common cadastral tasks under supervision of a licensed surveyor or been employed with the South Jutland Cadastre or with the cadastral authorities of the municipalities of Copenhagen or Frederiksberg.

According to the law employment of a maximum of one year elsewhere or by the cadastral authority of the National Survey and Cadastre might be taken into account. Under certain circumstances the Minister of Housing and Building can deviate from this requirement. International agreements on the subject or a decision of the minister of Housing and Building will repeal the provision of Danish citizenship and Danish graduation as surveyor, but due to recent political discussions it is considered to abolish the requirement of Danish citizenship.

The criteria for obtaining a license are objective and controllable but do not particularly imply a quality judgement of abilities and qualifications of the person that apply for license. Only one to two years of the total of the 5-year surveyor education deals with topics concerned with the licensed work. After having graduated and with a satisfying statement after three years of employment in private practice one can obtain a monopoly to do cadastral work upon licensing.

Other countries issue licenses to surveyors following similar procedures, but they often require a part of the employment, before obtaining license, is spent with the cadastral authority (e.g. in Germany). Further an examination must often be passed too, which is not required in Denmark.

The present requirements in Denmark make it quite easy for Danish subjects, who have graduated as surveyors, to obtain license. An EU-citizen, who possesses an acknowledged diploma as graduated surveyor from another country, may apply to the Danish authorities for license. So far no foreign citizens have applied for license. Subsequently the National Survey and Cadastre decide the terms that the applicant shall fulfil to obtain license. The National Survey and Cadastre have not determined prerequisite provisions for foreign surveyors' obtaining of license in Denmark. Provisions will probably be decided individually. Besides no particular approval is necessary for a surveyor who is a EU-citizen and only wants to get a job with a self-employed licensed surveyor or elsewhere, but do not want to apply for license.

Why is the surveyors' tribunal established and how does it function?

The background for establishing the Tribunal derives from the considerations of the Cadastral Commission in 1962. Then a reform of the cadastral organisation was considered and the considerations resulted in a bill to Parliament in 1963.

By the end of the 1950's the execution time of applications for subdivisions etc. increased steeply, partly because of the rising number of subdivisions and partly due to the increasing legislation, concerning regulation of real property that complicated the case considerations. Several authorities (e.g. forest and building authorities) should then take part in the approval of the applications before their approval by the National Cadastre.

The Cadastral Commission suggested these newly submits to local authorities about consideration of cadastral cases, should pass simultaneously and should be executed by the self-employed licensed surveyors.

The Commission had the view that this arrangement would increase the carried responsibility of licensed surveyors proportionally to clients and public authorities. The Commission stressed that they obliged the surveyor - besides being the adviser and taking care of his clients demands - to inform public authorities simultaneously of everything important for their case considerations. Increased responsibility, enjoined on licensed, self-employed surveyors, caused need for a disciplinary authority, whom Parliament charged to take action against surveyors offending against their duties.

The Cadastral Commissions work led to the fact that as well the Act of Surveyors and a change of the Act of Subdivision passed Parliament in 1963. By means of that the Surveyor Tribunal came into existence.

The Surveyors Tribunal is a so-called 'impartial tribunal' and is an alternative to the courts. Because of that it is important for the Tribunal that independence exists as well for its way of function as for its members. The law guarantees the functional independence since no one has authority to enjoin the Tribunal conditions that will limit its independence. Recommending institutions cannot enjoin the members of the Tribunal to receive instructions or mandates and therefor not interfere the personal independence.

The composition of the Tribunal and its tasks

The Minister of Housing and Building appoints the single Tribunal member for eight years and he appoints a Tribunal secretary also.

A judge chairs the Tribunal. Among the two other members one must be a surveyor employed with the National Survey and Cadastre, and the other one must be a self-employed licensed surveyor. The minister appoints substitutes for each member.

The Tribunal acts on a legal basis in the space between the public authorities, the courts and private industry complaint boards, and the National Survey and Cadastre pay the cost

for its activities.

Since the Tribunal is founded in law and since it without doubt does public administration, its duty requires that the public access to the cases. The parties cannot appeal judgements of the Tribunal to another administrative state authority. Each party can however bring complaints on the case considerations for the Danish “Ombudsman”. He is the final right of appeal for citizens who have exhausted every other appeal within the public administration. The parties bring very few judgements of the Surveyors Tribunal for the “Ombudsman”. They can however bring the case considerations and the Tribunal judgements for the civil court according to the Danish Constitution. In case of suspension of a license it is particularly favourable and cost free for the surveyor to bring this judgement for the court. The Surveyor should only request the Minister of Housing and Building to do so, within a time limit of four weeks after the judgement.

The tribunal may only act in the parts of Denmark where licensed surveyors are monopolised. According to that the Tribunal do not consider cases concerning complaints on surveyors in the municipalities of Copenhagen and Frederiksberg and in South Jutland. In these areas licensed surveyors are not monopolised but the municipalities or the state are monopolised and the surveyors are civil servants or publicly employed within these areas. The conditions of their appointment carry the disciplinary control. The persons with whom the Tribunal deals are self-employed licensed surveyors, licensed surveyors employed with these and private limited surveyor companies.

While reading the bill of surveyors in 1963, the Association of Danish Surveyors choose to recommend an impartial tribunal, instead of an association complaint board to deal with the expected cases of complaints, caused by the increased responsibility. The association has however maintained two complaint boards that also deal with complaints over work and fees of licensed surveyors who are members of the association.

The so-called “Committee of opinion” deals with complaints about licensed surveyors’ work, but only deals with members of the surveyors association. The committee deals with cases only on a written complaint and a written opinion from the surveyor in question. The committee may recommend that the surveyor correct his possible mistakes. The committee’s opinions are not public.

The Association of Self-employed Surveyors (a part of the association of surveyors) maintains a Committee of Fees. This committee deals with complaints concerning the claimed fees of the surveyors. They consider cases only on written request too and demand a written opinion from the surveyor in question. The committee demands a fee to deal with complaints over surveyors who are not members of the association.

Consideration of the cases

No agenda has been prescribed for the Surveyors Tribunal but the Act of Administration points out that reason generally should be given for decisions in public administration. The reason must include a reference to relevant provisions and a short statement of the facts important for the judgement. The main considerations must be expressed too if the decision really is a matter of judgement.

When the Tribunal Secretary receives a complaint the Tribunal first consider if it comes under its authority. The Tribunal only deals with specific complaints and do not give opinions or response for, e.g. trials. The complaint must be in writing and comprise the facts that the Tribunal should deal with. The Tribunal can on its own initiative take legal action against a surveyor, although it never happened.

The Tribunal members always decide if they have a bias concerning a specific case if a member declares himself disqualified the Tribunal deliver judgement concerning that and his substitute member joins the Tribunal.

The Tribunal must inform the accused surveyor about the claim before it starts the case consideration and he is asked to give his opinion in writing. The surveyor is also informed that he may appear before the Tribunal with an assessor or a lawyer. The complainant usually receives a copy of the surveyors written opinion.

Registered post calls the accused surveyor for the Tribunal in a letter with eight days notice. The complainant is encouraged to appear before the tribunal and deliver his opinion. It has happened a few times that the accused surveyor and/or the complainant did not appear.

It is regrettable when the parties, especially the surveyor, fails to appear for the Tribunal since this behaviour weakens the disciplinary institution and questions the surveying industry 's respect for the importance of the Tribunal. Nevertheless, it does not prevent the Tribunal from action in the case. The Tribunal cannot force the parties to appear but it has authority to ask the local court to question the parties and other witnesses in the jurisdiction where they live. This causes the duty for them to give evidence due to the Act of Justice. So far the Tribunal has not used this opportunity.

The Tribunal takes minutes of the questioning and record a brief abstract of the case and the parties' explanations and amendments. Judgement will usually be delivered shortly after but sometimes a need occur for subsequent detailed statements in writing from the parties.

The judgement is sent to the parties and to the National Survey and Cadastre. Most of the judgements are subsequently published in an anonymous form in the surveyors' monthly journal.

Possible sanctions are warning, reprimand, a penalty to a maximum of 40,000 DKK (app. 6,000 USD) or suspension of license. The local police authority recovers the penalties that go to the Treasury. The Tribunal is authorised to suspend the surveyors' license for one to five years or for the time being and it can subsequently abolish such judgement later.

In recent years the questioning took place in three cities in Denmark, suitable placed for the parties. The Tribunal rarely investigates the physical conditions concerning the complaint. Execution time is often long. This is because the process itself demands good time, since the parties are given an opportunity to deliver and comment on statements. Besides each of the Tribunal members have other main jobs, so they must find time to be acquainted with the cases and find space in their diaries.

About a study last year of the execution times within the state administration, reported the

Tribunal secretary the execution time to be approximately eight months for the ten judgements delivered in 1996.

What does the Tribunal attend to?

What says the law and what is practice?

The Act of Surveyors says that the tribunal may sanction surveyors and private surveying companies that ``by practising their business neglect the duties of their position''. It means that the Tribunal definitely considers cases concerning the monopoly on cadastral work that licensed surveyors possess. It concerns subdivision, transferring of lots from one property to another, amalgamation of properties, boundary determination and boundary changes, marking out boundaries and judgement of boundary disputes. Besides, the Tribunal deals with other cases too that are not comprehended of the monopoly. Examples of such considered cases are complaints concerning determination and marking out constructions and buildings in the field proportional to property boundaries, issuing certificates concerning real property and consulting in working fields that are natural tasks for surveyors.

Therefore the limit of the kind of cases that the Tribunal wants to deal with is fluent and depending on age and peoples customary behaviour. Surveyors do not deal with similar tasks now as they did in 1963 as the law passed Parliament, and because of that the Tribunal must always be up to date concerning the customary tasks for licensed surveyors, and adjust the practice of which cases it wishes to consider. This attitude harmonizes with an assumption from 1969 as the Tribunal chairman then considered that the Tribunal should deal with cases that people usually ask surveyors to carry out. The Ministry of Justice and the National Cadastre then supported this point of view.

The following examples illustrate case considerations that do not concern clear monopolized tasks. The Tribunal has recently considered a case concerning a complaint over a licensed surveyor who marked a building out in the field based on a plan that a building company had prepared on an outdated copy of the official cadastral map. The surveyor did not deliver any notice concerning that to the complainant, and the front garden was reduced considerably. The complainant expected the surveyor to take notice on that although this service did not appear from the order. The Tribunal acquitted the surveyor. On the other hand the Tribunal rejected to consider a case concerning a complaint over a licensed surveyor who did not properly measure the area of a field for a subsidy purpose.

What kinds of issues are brought for the Tribunal?

In the period from 1963 to 1978 the Tribunal received 69 cases and at the end of 1997 the number of cases reached 188. That is an average of a good 4 cases per year in the first 15 years and hardly 6 cases per year in the last 20 years with an upward tendency recent years. The number of cases is not large. However the execution time seems to increase gradually which is, for example caused due to changes of the case nature.

A report from 1978 (Buhl, 1978) notices that the judgements since 1963 particularly dealt

with complaints over surveyors' delay of their case considerations. Besides they often delivered misleading information to their clients. Some judgements dealt with cases in which the surveyor has delivered misleading information to public authorities or he has omitted to reply applications from the authorities. A few cases dealt with technical aspects of the case considerations or failed boundary markings etc.

In recent years the cases are increasingly about ethical issues. Many complaints are particularly about bad treatment of the clients and other involved citizens, e.g. insufficient and slipshod information, a feeling of insufficient involvement in the procedure by marking out boundaries, a belief that the surveyor has expressed a too one-sided attitude in favour of his client or that his behaviour is self-asserting and paternalistic.

Of 57 judgements delivered from 1977 to 1997, the Tribunal dismissed 27. Warnings were delivered in 8 cases and reprimands in 8 cases. Surveyors were fined in 14 cases with penalties between 2,000 DKK and 15,000 DKK (285 USD and 2150 USD). 40 cases were rejected. The suspension of license has never happened. (See the appendix).

The surveyors' clients or their neighbours, bring most cases for the Tribunal. To some extent public authorities bring cases too. For example cases are brought by the National Survey and Cadastre that control the surveyors' cadastral cases and approve them, and by the National Agricultural Administration that supervises the surveyors work concerning, e.g. subdivision and amalgamation of agriculture holdings.

Does the Tribunal fulfil its purpose?

Who knows about the Tribunal?

The Tribunal is without doubt not the best-known complaint board in Denmark, which is due to several reasons. The Tribunal deals with complaints over specific work executed by the licensed surveyors who belong to a small industry comprising only 300 businesspeople and with whom citizens get in touch with only a few times in their life. Some complainants prefer the surveyor to correct results rather than get him sanctioned. Since the Tribunal is not authorised to enjoin the surveyors to correct their work, interest is often lost, when complainants learn that there is no authority to order rectification. Due to complaint guidance the complainants perhaps prefer to bring a case before court or find it more sufficient to bring the complaints for the "Committee of Opinion" or the "Committee of fees".

The Tribunal does not draw much attention to itself and its tasks outside the surveyors' circle, presumably because relevant cases no doubt will reach the Tribunal without publicity. This expectation however requires that surveying profession and the National Survey and Cadastre to give necessary guidance to potential complainants. As a support the Tribunal and the surveyors' association in co-operation last year published a small brochure that briefly informs about the Tribunal, the Committee of Opinion and the Committee of fees. Besides a procedure is agreed between the Tribunal and Surveyors Association aiming to ensure the best information to complainants regarding their possibilities to forward complaints in the right way.

Do the cases reflect development in society?

In chapter 3.2 it appears that the cases the last 20 years have changed their character from complaints on technical faults to ethical questions and simultaneously has the number of cases per year raised a little.

In earlier times the surveyors' authority and people did not question the way he behaved particularly. Now one must ask if surveyors in recent years have become more unethical but at the same time have improved in dealing with the technical parts of the tasks, since the number of complaints on these matters has fallen. The question is also, why the total numbers of complaints have an upward tendency. Did changes occur in citizens' morality that may explain this?

International sociological surveys carried through in 1981 and 1990 gives a hint to whether the development in the cases' character and the rise of case numbers are connected with a common development in society. The survey put the same questions to people in the two years of the period and aimed to uncover changes in life values of the Danish people.

By practising their licensed and other natural duties, surveyors are said to exercise authority and are commonly supposed to be representatives of the public administration even if they are private businesspeople. Two contradict tendencies appear from the survey concerning changes of peoples respect for authority and the attitude to public authorities during the 1980's. (Gundelach & Riis, 1992)

It appears that respect for authority fell dramatically in the period for all questioned groups despite age and social levels, while confidence in public authorities fell a little but still was very high compared to other European countries.

A fall in respect for authorities is expressed in people's scepticism towards statements or orders that they do not agree with at first. The survey says that the morality during the 1980th has grown to be a ' 'negotiation morality' ', which means a morality that expects one to discuss appropriateness of orders concerning duties or public administration, before one is willing to obey it. Even so, there is still a wide support to the public systems in Denmark. Here the welfare state is constructed by aiming at solidarity and community spirit. The individual is inculcated mutual respect between the subject and the state far more due to the Danish welfare model than other welfare models.

Comparison between Denmark, Norway, Sweden and eight other EU-countries might be expounded so that the individualisation process - and with that the tendency aiming for "negotiation morality" - has run fast, especially in Denmark. The communication of the community spirit might change character in the way that agreement no longer aim at the moral principles themselves, but aim at the procedure or the negotiation that should create the basis of the principles. One may expect accordance with the result of the sociological surveys and the changes of the complaint cases' character recent years.

People do not at first accept authorities, they rather wish to be convinced themselves about the truth of an action, a statement or an argument. This fact demands ability of communication and understandable information from the surveyor, concerning the task in

question and information about the client's opportunity to discuss the problem. On the other hand people expect their properties to be administered adequately and expect a higher morality too among surveyors, than laws and regulations strictly enjoin them.

Conclusion

The Tribunal has been in charge as the disciplinary authority concerning licensed surveyors for 35 years. All that time it aimed to correspond to the needs of society for the necessary quality control created by the monopoly on cadastral work. Besides the courts and the two complaint boards of the Surveyors Association has also dealt with disciplinary items.

Since it's founding in 1963, the Tribunal expanded the meaning of its authority to comprise all tasks that citizens normally ask surveyors to execute. This covers more than the cadastral task of which surveyors are licensed.

The character of the complaint cases has changed parallel to changes in the societies opinion on life value that changed particularly fast through the 1980th. Most complaint cases nowadays comprise ethical issues about insufficient information, bad treatment, insufficient involvement in the procedure of marking out boundaries and self-asserting behaviour, for example.

Among the sanctions the Tribunal has at its disposal, only warnings, reprimands and fines were used. 15,000 DKK (2150 US) were the highest penalty ever sanctioned and no surveyors license have been suspended.

It is necessary that the complaint process is carried through in a way that gives confidence to the parties, and then the Tribunal can fill its role in accordance with the public opinion. Therefore, information that is important to the case considerations must be available for all parties involved. The Tribunal members should not feel disqualified or be in a position of limitation caused by the institutions that proposed their membership.

It is an obvious weakening of the Tribunals authority that a few accused surveyors recently failed to appear from the questioning for which they were called. The referred survey of changes in Danish peoples opinion of life values, may explain why the number of complaint cases obviously has increased and probably still will increase in future. Surveyors can however contribute to curb the number of cases by paying attention to clients and other parties' wish of proper involvement and reasonable treatment while executing his tasks.

Summarising, it must be said that the Tribunal after 35 years and even at the steps of the year 2000 still is a smooth and powerful tool for society in the quality control of how licensed surveyors are handling their monopoly in Denmark. The ultimate power of the Tribunal is if no complaint case occurs only because surveyors' knowledge of the Tribunals existence and the sanction it has at its disposal. Nevertheless, that is not real life. Complaint cases are still expected to occur and the Tribunal will still reflect society opinion of "good surveyor practice", by means of the judgements.

It is however first of all the licensed surveyors` acknowledgement of the disciplinary institution that is crucial to the public opinion of an adequate administration of their monopoly on cadastral work.

COMPLAINTS TO THE SURVEYORS TRIBUNAL 1977-1997

Year	Judgments	Rejected cases	Reason for complaint			Sanctions			Acquittal
			Mistake	dawdling	ethics	Warning	Reprimand	Penalty	
1977	3	2	2		1			1	2
1978	3	2	2	1		1		1	1
1979	2	2	2					1	1
1980	0	0							
1981	2	3					1		1
1982	0	5							
1983	0	0							
1984	1	7		1			1		
1985	2	3		2		1	1		
1986	1	4						1	
1987	1	1					1		
1988	3	0			3		2		1
1989	2	0						1	1
1990	7	1	1	1	5	1			6
1991	1	2			1			1	
1992	2	1	1		1				2
1993	6	2		3	3	1	1	2	2
1994	3	2			3	1		1	1
1995	5	0		1	4	1		1	3
1996	8	0	3		5		1	2	5
1997	5	3			5	2		2	1
Sum	57	40	11	9	31	8	8	14	27
Average	2,7	1,9	1,8	1,5	3,1	1,1	1,1	1,3	2,1