
A DECENTRALIZED APPROACH TO INSPECTION AND ENFORCEMENT DONE BY COUNTIES AND MUNICIPALITIES IN DENMARK

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SUMMARY

In Denmark administration and enforcement of environmental legislation is done by local government (275 municipalities and 16 counties). This way of administration and enforcement raises the question, how to secure a certain level of quality in this process and its results. A general survey, how these problems are solved in Denmark, is given. The paper focuses primarily on, how a uniform level of inspection (as a precondition to enforcement) is secured by the Danish E.P.A., in a way, that holds local government responsible.

1 INTRODUCTION: LOCAL GOVERNMENT IN DENMARK

In Denmark, administration and enforcement of the environmental legislation is basically carried out by local government.

Denmark (5.000.000 inh., 43.000 km²) is administratively divided into 16 counties, and subdivided into 275 municipalities. The average municipality has 10.000 inhabitants - a few are smaller and several are bigger; especially the municipalities with larger cities - e.g. the municipality of Copenhagen has 470.000 inhabitants. On average, a county has a population of 300.000 to 400.000 inhabitants.

The municipalities and the counties are administratively and politically independent of each other. Each of the two levels of local government has its separate functions to fulfill; also in the field of environmental protection.

The principle behind the division of labour between municipality and county is, that the specialized functions and the most costly functions are done by the county while the more general functions, and functions limited to a smaller area are done by the municipalities (1).

The Danish Environmental Protection Agency - a part of the Danish Ministry of Environmental Protection - has no executive branches, either on the state level or on one decentralized level.

Local government- municipalities and counties - are headed by elected councils. Each council has the responsibility for carrying out administration of the relevant laws and are setting up a local administration to do this. The local government is financed by taxes imposed by the local government (2).

This means that there can be substantial differences between the municipalities or the counties in the way they are carrying out their tasks according to national law.

The legislative power rests solely on the Danish Parliament ("Folketinget") who are passing all national legislation.

These national laws constitute the legal framework for the administration carried out by local government. Besides environmental protection, the local governments are as a whole responsible for basis education, high schools, hospitals, roads, etc.

2 DANISH ENVIRONMENTAL LEGISLATION AND THE DIVISION OF LABOUR BETWEEN THE STATE AUTHORITY AND LOCAL GOVERNMENT

2.1 The administrative framework

The first Danish Environmental Protection law was passed in 1972.

In relation to industrial and agricultural production the legislation regulates the activities in three ways:

- It holds some basic general prohibitions; e.g. it is forbidden to discharge waste water or other kinds of waste to streams or lakes without a permit.
- It defines that a license is needed to begin or enlarge some clearly defined industrial and agricultural activities.
- It gives the possibility to impose restriction on all kinds of ongoing activities if the actual or potential pollution is unacceptable.

The licences for new activities (see 2 above) and the restriction on ongoing activities (3) (see 3 above) is generally carried out through a set of conditions to secure, that pollution in all aspects is at a tolerable level.

According to the law, each level of local government has its own, independent area of responsibility administrating and enforcing this law.

The inspection of sites, plants and the general environment in order to enforce the environmental protection law is carried out by local government.

The 275 municipalities employ all in all 470 inspectors - the counties employ a total of 320 inspectors - these inspectors' only task is to enforce the environmental legislation.

Issuing of permits is done by local government and also imposing of environmental restrictions on ongoing activities is carried out by the counties or the municipalities, according to the division of labour between these two authorities.

In these relations, the Danish Environmental Protection Agency has practically no executive tasks to carry out.

But the Agency provides the local government with guidelines on how to administrate the law and on the recommended standards for emission and emission of pollutant substances to either air, soil or water.

These standards are only recommendations. They are not - either formal or in practice - standards that have to be followed by the local government.

2.2 Why local government?

The way local government is carried out in Denmark reflects a common understanding of democracy, basic for the Danish society. The decisions must be taken by those, who are primarily affected by the consequences. The distance between the citizen and the decision-makers shall be as short as possible, and there must be room for regional and local differences in the way things are done.

Focusing on the environmental administration, local government was found expedient because of the different sustainability of the various geographical locations.

Not all parts of the environment have the same vulnerability and some parts must be protected more than others. It was felt that knowledge of these facts and slight differences in the policy towards the environment could be better reflected in decisions taken by local government than in decisions taken by state authorities.

Finally the local governments have to face the political responsibility of the way environmental policy is carried out in the municipality or the county. This gives the citizens a close insight and influence on the environment in which they live.

2.3 Problems in local government in relation to environmental administration

Despite all advantages, at the same time, local government creates a number of problems in relation to environmental administration and enforcement.

The differences in the way compliance enforcement is done in the various municipalities or counties can be too big, causing the non-fulfillment of the environmental policy established on the national level. Some municipalities may prioritize low taxes instead of a proper environment, and thus by a relaxed enforcement and compliance checking create local environmental conditions that are below average.

These municipalities will often neglect environmental administration, causing a low level of activity in inspection and thus enforcement. They will, in the process of permitting, set standards below what is recommended in the guidelines issued by the Environmental Protection Agency or they will draw back from intervening in ongoing activities, which cause unacceptable pollution.

This is of course a serious threat towards the environment and the overall national policy in this field. But it is also a problem for the industry as a whole. If local government in the field of enforcement of environmental legislation creates too big a difference between the various municipalities in relation to the environmental conditions for running a specific production, the results will be uneven competition-conditions for these production. Local government in this way can cause "environmental dumping"; e.g. with the hindsight to accumulate jobs in the municipality on the expense of the environment.

The Danish system of environmental administration has been working for over 20 years and is still based on local government. This proves, that these problems has not been prevalent - else the system would have been changed. But The Danish E.P.A. has continuously to be aware of this complex of problems; both in the continuous process of maintaining and developing this system and to react promptly in the - fortunately - rather few cases, where municipalities or counties fail to live up to standard.

3 RELATIONS BETWEEN STATE AND LOCAL GOVERNMENT IN ENVIRONMENTAL ADMINISTRATION AND COMPLIANCE CHECKING

3.1 Conditions for the relation state - local government

The problems mentioned above can be solved easily.

Recommendations and guidelines can be changed into binding standards - standards the local authorities has to conform to when issuing permits.

The state authorities can set standards for staffing in local government in order to secure, that a basic condition for inspection - staff - is at hand. And state authority can set standards for intervals between inspection for various types of installations and factories in order to secure enforcement of rules and regulations. Standards and binding prescriptions for enforcement can be made in order to create uniformity.

But doing this will be to transform local government into local agents for the state authority and thus abandon local government.

If local government is the basic policy when it comes to administration, the remedies for the problems described above must respect the fundamentals of local government.

Thus a certain space of action must be left open for decisions in local government, allowing for a tolerable span of differences due to local adjustments and interpretations of state laws.

This calls for a system of checks and balances between local government and state government - a system that secures that the national policy is fulfilled local and that local government has a genuine responsibility for this fulfillment and its adjustment to the conditions in the local society.

3.2 Checks and balances between state and local government on inspection - management by information

A key aspect in the process of enforcing the environmental legislation is to secure compliance with requirements set out in the legislation and with permit conditions.

A range of methods can be applied in performing this task, methods, that in one mixture or another combine inspection and self-monitoring.

The basic instrument is inspection because self-monitoring always will presuppose some degree of inspection.

Inspection thus becomes a fundamental activity in enforcement of all environmental legislation. It can be combined with self-monitoring, quality control systems etc, but all these tools presuppose a certain degree of inspection.

When dealing with inspection as a part of the process of enforcement it is fundamental, that the inspections actually are carried out; that means, that the necessary resources are at hand and that these resources are used for inspection.

In order to check these things, the 275 Danish municipalities have since 1986 each year returned a questionnaire to the Danish Environmental Protection Agency about the way the enforcement and inspection is carried out.

The environmental protection law provided the legal basis for this information system.

In the questionnaire the municipality gives information about:

- the number of man-years used on inspection, totally subdivided on own administration and consultants
- the number of factories, farms and other objects of inspection
- the number of inspection visits subdivided on type of objects of inspection
- the number of inspected factories, farms and objects
- the number of man-year used on each kind of inspection object (factories, farms etc.)
- the number of enforcement-acts (e.g. numbers of police-reports) subdivided on the subject of inspection.

The questionnaire is returned to the agency together with a brief report on how the inspection has been carried out and an evaluation of the results.

The report and the questionnaire are approved by the municipality council before it is forwarded to the Danish E.P.A. - the municipality has to inform the public about the content of this report on enforcement.

The information given to the agency is publicized in both the municipal council and the local community. Although it in Denmark is a practice that reporting from local authorities to central authorities is painstakingly carried out, this publication gives an extra assurance, that the reports are in accordance with reality. Otherwise the local opposition in the municipal council or green organizations in the local community will raise their voices.

3.2.1 The annual report from Danish E.P.A.

Each year, after having received the reports from the municipalities, the statistical data are summed up and a summary of the written reports is made in the agency.

These results are presented in a report from the agency every year in October. This report has in the last years been divided in two parts.

3.2.1a Part 1: The enforcement on national level

The one part deals with the overall situation in the municipalities regarding inspection and control.

Statistics are presented on how many man-years there are totally employed in the municipalities for inspection. Information is given on the development in total number of objects of inspection, in total number of inspection and the total number of inspection-visits on factories, farms etc. - normally the results of the year are related to the results from the last three years.

These data are also presented interrelated - e.g. the number of factories inspected in relation to the total sum of factories, the number of inspection-visits related to the number of enforcement-actions and so on.

Finally this part of the report contains a summary of the written reports from the municipalities. This is of course difficult on a few pages to summarize reports from 275 municipalities - therefore certain themes are selected each year.

3.2.1b Part 2: Enforcement in each municipality

The other part of the report from Danish E.P.A. on the municipal efforts in inspection and enforcement deals with the way this task is carried out in each of the 275 municipalities.

Maps are used here to give a survey over the status and trends of development in each of the 275 municipalities.

Different themes are selected, e.g. the number of inspected factories or farms through three years related to the total number of these object of inspection in each municipality or the number of inspectors related to the number of inhabitants.

The overall reason behind this way of presentation is to create a clear picture of the state of enforcement in all the municipalities.

This way of presenting the data gives the municipality's council an opportunity to compare itself with other municipalities with regard to several themes on enforcement.

The municipality council can see whether its efforts are on the average, below or over and the council can act accordingly by adjusting its efforts.

The publication of this report often causes debate in the councils - in cases of poor enforcement compared to similar municipalities the opposition in the council often uses the report to try to prompt the mayor to augment the effort.

The local press has shown great interest in the report - especially if the municipalities in their area are under the average. This causes debate in the local press - a debate that quickly involves the politicians who are responsible for the enforcement and control. Green organizations use the report in a similar way.

This public debate will often cause a adjustment of the activity in the municipality.

Finally the Ministry of Environment uses this report to interfere when it is disclosed that a municipality grossly neglects its duties.

In these cases, the ministry often will ask the municipalities in question to explain why their performance is so bad, and to explain how they intend to make things better.

The ministry does not have the possibility to force the municipality to engage more staff or to carry out more inspection visits - this would be an infringement of local government, but critics from the ministry will always have a very severe impact in the political debate in the municipality.

This system, which can be described as management by information, has worked very successful in Denmark through the last five years.

3.3 Checks and balances between state and local government on use of guidelines for emission and imission - the appeal system

In environmental administration in Denmark, the decisions made by local government will often be estimations based on the guidelines issued from the Danish Environmental Protection Agency.

The reason why guidelines are used - in contrast to binding standards - is, that the guidelines makes space for assessments made by local government facing an environmental problem.

But this system can be abused by setting conditions for factories and activities that in fact are “environmental dumping” or is too harsh in comparison with the average conditions for the said activity.

In order to cope with these situations, every decision, made by local government on the basis of guidelines, can be appealed to the Agency.

Dealing with these appeal cases, the agency will consider whether the deviations from the guidelines is made on the basis of sound environmental principles.

ENDNOTES

1. For example, the counties take care of high schools, the municipalities of elementary schools; the county is in charge of pollution that affects more than the local area, the municipalities are in charge of activities that pollutes the local area.
2. This means, that the Danes are paying four kinds of taxes: state tax, county tax, municipal tax and church tax!
3. If the restriction is not a permanent stop.