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submitted to the Public Accounts Committee

The probate courts' processing of complaints against and supervision of executors of estates

1. Introduction and conclusion

1.1. Purpose and conclusion

1. This report concerns the Danish probate courts' processing of complaints against and supervision of executors' administration of the estates of deceased persons.

2. There are approx. 54,000 deaths in Denmark every year. Every death leaves an estate to be settled. The estate of the deceased is administered by the probate courts, and most estates are closed by the probate courts with the assistance of the heirs. However, some estates are managed by executors appointed by the probate courts. The heirs may decide to authorise an executor to administer the estate. The Administration of Estates Act may also, in specific circumstances, stipulate that the estate is to be administered by an executor, for instance, if this is stated in the will of the deceased, or the estate is considered insolvent. The number of closed probate cases administered by executors was approx. 6,000 annually in the period from 2009 to 2019.

3. If an heir or another party to a probate case is not satisfied with the executor's administration of an estate, he or she can file a complaint with the probate court against the executor's:

- transactions and processing of the case, including the executor's failure to administer the estate without undue delay;
- decisions;
- fee;
- impartiality.

4. The 24 probate courts make decisions on complaints against executors. Additionally, it is the responsibility of the probate courts to supervise the executors through sample-based checks. The regulations of the Administration of Justice Act concerning appeals also apply to decisions made by probate courts. This means that complaints against the outcome of the probate courts' investigations of complaints about executors can be appealed to the high courts.

5. The study covers the years from 2009 to 2020, but its main emphasis is on the period from 2016 to 2020.

Executor

The executor is authorised to manage the estate, makes decisions concerning the affairs of the estate and brings the administration of the estate to a speedy conclusion.

Most frequently, the executor is a lawyer authorised to act as executor. However, the probate court can also appoint another person who practices law or meets the terms of chapter 2 in the executive order on executors.

Complaints filed with the high courts

Complaints against the outcome of the probate courts' investigation of complaints can be appealed to the high courts. The complainant sends a notice of appeal to the relevant probate court in which he/she outlines the background for the complaint and what outcome he/she wants to achieve through the appeal to the high court.

The complainants are most frequently heirs or other parties to a probate case that are dissatisfied with the executor, but an executor can also complain, if he/she is not satisfied with the outcome of a probate court's investigation of a complaint against their administration of an estate.

6. The purpose of the study is to examine the probate courts' processing of complaints against and supervision of executors' administration of estate. The report answers the following questions:

- What is the scope and contents of complaints against executors?
- What is the outcome of the probate courts' investigations of complaints against executors and how long do the probate courts' take to process complaints?
- What is the scope and outcome of complaints filed with the high courts against the outcome of the probate courts' investigations of complaints against executors?
- How often have the probate courts removed an executor, because the estate was not administered with due diligence, without delay or kept safe, and what criteria provided the basis for the probate courts' removal of the executor?
- What is the extent of probate courts' supervision of the executors, including whether sample-based checks are made every second year, as a minimum, and what is the outcome of the supervision?

Rigsrevisionen initiated the study in March 2020 at the request of the Danish Public Accounts Committee.



Main conclusion

It is Rigsrevisionen's assessment that the probate courts' sample-based supervision of the executors has not been satisfactory. The study shows that 10 out of the 24 probate courts have failed to carry out the required minimum of a sample-based check every second year, and four of the 10 probate courts have not carried out a single sample-based check over a period of four years. More than every third sample-based check leads to criticism of executors who are not complying with current regulations. The consequence of the limited number of sample-based checks carried out by some of the probate courts is a risk that the probate courts fail to detect executors who are not complying with current regulations.

The study also found that complaints against executors are made in 2.7% of all cases, and that 25% of the complaints heard by the probate courts were fully or partially upheld by the probate courts in favour of the complainants.

Annually, complaints are made against executors of approx. 184 closed cases. This means that, on average, complaints are made against executors in 2.7% of all cases. Twenty-three percent of the complaints are rejected, and 25% of the remaining 77% complaints that are heard by the probate courts, are either fully or partially upheld. Complaints are upheld slightly more frequently, when they concern the executors' fee than when they concern their decisions and administration of the estate. It takes the probate courts on average approx. 72 days to process a complaint. However, the average processing time varies considerably between the individual probate courts, i.e. between 29 days and 126 days.

Every year, the high courts hear approx. 64 complaints against the outcome of the probate courts' investigations of complaints against executors. The high courts have found fully or partially in favour of the complaints against the probate courts in 18% of the cases, or they have referred the complaints back to the probate courts. In the remaining 82% cases, the high courts have either found against the complainants or rejected the complaint.

In the period from 2016 to May 2020, the probate courts removed executors from 15 estate cases, which corresponds to approx. 0,06% of the total number of estate cases closed in that period. The executors were removed, because they had failed to safeguard the estate, act diligently or administer the estate without delay. The underlying cause of their removal was poor performance of their duties or issues concerning impartiality.

In the period from 2016 to 2020, the probate courts' sample-based supervision of executors included 377 cases, which corresponds to 1.3% of the total number of cases closed in that period. This percent varies considerably between each individual probate court: from nil to 5,2 %. Also, the frequency with which the individual probate courts carried out sample-based supervision varies considerably; one court carried out the supervision all five years in the period from 2016 to 2020 and three courts carried out the supervision in four of the five years. Ten probate courts did not carry out any supervision based on the minimum requirement of a sample-based check every two years, and four of these probate courts did not carry out any sample-based supervision for four years. Thirty-five percent of the completed checks led to criticism of the executors for having failed to comply with the regulations of the executive order on executors or the Administration of Estates Act. It is Rigsrevisionen's assessment that the fact that more than every third check results in criticism of the executor's performance, highlights how important it is for the probate courts to carry out sample-based supervision of the executors.