

DANISH ADMINISTRATION OF JUSTICE ACT

Chapter 73

Search

Section 793. (1) Pursuant to the rules of this Chapter the police can conduct searches of

- 1) residences or other dwellings, documents, papers, and similar, as well as the contents of locked objects, and
- 2) other objects as well as premises other than dwellings.

(2) Searches of premises or objects, which are freely accessible to the police, are not regulated by the rules of this Chapter.

(3) A search to locate a suspect, who is to be arrested, or a person, who is to be taken into custody for the purpose of enforcing a punishment or the alternative penalty in default of payment of a fine, can further take place pursuant to Sections 759 and 761. As for examination of the body of a person and searching the clothes, which the individual is wearing, the rules of Chapter 72 apply. As for examination of letters, telegrams, and similar mail deliveries, the rules of Chapter 71 apply.

Section 794. (1) Searches of dwellings, other premises or objects, of which a suspect has possession, can only be conducted if

- 1) the individual on reasonable grounds is suspected of an offence, which is indictable by the State, and
- 2) the search must be presumed to be of significant importance for the investigation.

(2) As for searches of the kinds mentioned in Section 793 (1), no. 1, it is further required, either that the case concerns an offence, which under the law can result in imprisonment, or that there are specific reasons to presume that evidence in the case or objects, which can be seized, can be found by the search.

(3) If, during the search of the possessions of a suspect, written messages or similar are found, which originate from a person, who pursuant to the rules of Section 170 is excluded from giving testimony as a witness in the case, searches hereof must not be conducted. The same applies to material, which originates from a person, who is included in Section 172, when the material contains information, which the individual pursuant to Section 172 is exempted from testifying about as a witness in the case.

Section 795. (1) Searches of dwellings, other premises or objects, of which a person, who is not a suspect, has possession, are not regulated by the rules of this Chapter, if the individual grants written consent to the search or if, in connection with the detection or report of an offence, consent is granted by the individual. Besides, a search of the possessions of a person, who is not a suspect, may only take place, if

- 1) the investigation concerns an offence, which under the law can result in imprisonment, and
- 2) there are specific reasons to presume that evidence in the case or objects, which can be seized, can be found by the search.

(2) As for the possessions of persons, who pursuant to the rules of Section 170 are excluded from giving testimony as witnesses in the case, written messages and similar between the suspect and the person concerned, as well as notes and similar by this person concerning the suspect, are not subject to search. As for the possessions of persons, who are included in Section 172, material containing information about matters, which the individuals pursuant to Section 172 are exempted from testifying about as witnesses in the case, are not subject to search.

Section 796. (1) Decision of search concerning the objects or premises mentioned in Section 793 (1) no. 2, of which a suspect has possession, is made by the police.

(2) Decision of search in other situations is made by court order, cf., however, Subsections (5) and (6). The court order shall state the specific circumstances in the case upon which it is based, that the conditions for the measure are fulfilled. The court order can at any time be reversed.

(3) If the purpose of the measure would be forfeited if a court order were to be awaited, the police can make the decision to conduct the search. If the person, who has possession of the dwellings, premises or objects, against which the search is directed, puts forward a request hereof, the police shall as soon as possible, and at the latest within 24 hours, bring the case before the court, which in the form of a court order decides if the measure can be approved.

(4) Before the court makes a decision pursuant to Subsection (3), 2nd period, the person who has possession of the dwellings, premises or objects, against which the search is directed, shall be given the opportunity to make a statement. Section 748 (5) and (6) similarly apply.

(5) If the search is directed against dwellings, premises or objects, of which a suspect has possession, and this individual grants a written consent to the search being conducted, the decision of search can also be made by the police.

(6) A decision to the effect that, in connection with the detection or report of an offence, a search of the scene of the crime is to be conducted, can, regardless of the rule in Subsection (2), also be made by the police if the person, who has possession of the dwelling, premise or object concerned, is not a suspect and it is not possible to come into contact with this individual immediately. In that case, notification of the search shall be given to the individual as soon as possible.

Section 797. (1) A search must not be conducted if, considering the purpose of the measure, the significance of the case, and the offence and inconvenience, which the measure can be presumed to cause, it would be a disproportional measure.

(2) In making the decision pursuant to Subsection (1) it shall further be taken into consideration if the search involves destruction or damage of objects.

Section 798. (1) Searches shall be conducted with the utmost leniency as allowed under the circumstances, including, to the extent possible, without causing destruction or damage, and without the measure, due to the time or the way in which it is conducted, giving cause to unnecessary attention.

(2) If the person, who has possession of the dwelling, the premise or the object, or in his absence other persons are encountered, these individuals shall be informed of the conduction of the search and the grounds therefore as well as be invited to witness the search. If the search is conducted based on a court order, this shall, upon request, be shown. If the search is conducted pursuant to the rule in Section 796 (3), the police shall advise the individual of the access to bring the matter before the court. The person, who has possession of the dwelling, the premise or the object, can demand that another person of his choice witnesses the search unless time-based or investigative reasons speak against this. If the purpose of the search requires it, including if obstacles are put in the way of the conduction of the search, the police can decide that the persons encountered shall be removed while the search is taking place.

(3) If nobody is encountered when a search as described in Section 793 (1), no. 1, is to be conducted, two housemates or other witnesses shall, to the extent possible, be summoned to witness the search. After the conduction of a search as described in Section 793 (1), no. 1, the person who has possession of the dwelling or the object shall be notified hereof, and, if the search has been conducted pursuant to the rule in Section 796 (3), of the access to have the matter brought before the court; a possible manner is for the police to leave a notice in writing at the location.

248

Section 799. (1) If it is of crucial importance for the investigation that the search is conducted without the knowledge of the suspect or others, the court can, if the investigation concerns an intentional violation of the Criminal Code Chapter 12 or 13 or a violation of the Criminal Code Section 180, Section 183 (1) and (2), Section 183a, Section 186 (1), Section 187 (1) and Sections 191, 192a or 237, in the form of a court order make a decision to this effect and of deviating from the rules of Section 798 (2), 1st – 4th period, and Subsection (3). However, this does not apply as for searches of dwellings, other premises or objects in possession of somebody, who pursuant to the rules of Section 170 is excluded from, or who, pursuant to the rules of Section 172, is exempted from testifying as a witness in the case .

(2) The rules in Section 783 (2) and (3), Section 784, Section 785, and Section 788 apply to the cases described in Subsection (1), 1st period.

(3) The court may decide that repeated searches may be carried out within the time period which according to Subsection (2) is laid down under Section 783 (2). The court shall in this connection fix the number of searches. Under special circumstances the court may decide that an indeterminate number of searches may be carried out.

Section 800. (1) If, during a search, the police obtain information about an offence, which has not formed and which according to the rules of Section 794 (1) no. 1 and (2); Section 795 (1) no. 1; or Section 799 (1), respectively, could not form the basis for the measure, the police can use this information as part of the investigation of the criminal offence concerned, but not as evidence in court in regard to the offence.

(2) The court can decide that Subsection 1 does not apply as for information obtained by the police during a search conducted pursuant to Section 799 (1), if

- 1) other investigative measures will not be suitable for securing evidence in the case,
- 2) the case concerns an offence, which under the law can result in imprisonment for six years or more, and
- 3) the court otherwise finds that it does not cause concern.

Chapter 74

Seizure and disclosure

Section 801. (1) Pursuant to the rules of this Chapter seizure can take place

- 1) to secure evidence
 - 2) to secure the claim of the State for costs, confiscation and fine
 - 3) to secure the claim of the victim for restoration or compensation, and
 - 4) when the defendant has absconded from further prosecution of the case.
- (2) Objects, which the police take into custody, of which nobody has or admits possession, and over which nobody claims a right, are not regulated by the rules of this Chapter.
- (3) As for the surrender of letters, telegrams, and similar mail deliveries, as well as for information about connections between telephones, etc., the rules of Chapter 71 apply. As for the removal of objects and money in relation to arrest, the rule of Section 758 (1) further applies.

Section 802. (1) Any object at the disposal of a suspect may be seized, if

- 1) the person in question is reasonably suspected of an offence liable to public prosecution, and
 - 2) there is reason to presume that the object may serve as evidence or should be confiscated or forfeited, but cf. Subsection (2) below, or that, through the offence, it has been swindled out of somebody who can claim it back.
- (2) Goods owned by a suspect may be seized, if
- 1) the person in question is reasonably suspected of an offence liable to public prosecution, and
 - 2) seizure is considered necessary to secure any claim of public authorities for costs, any claim for confiscation or forfeiture pursuant to Section 75 (1), first sentence, second limb, and second sentence, Section 75 (3), Section 76a (5) and Section 77 a, second sentence, and any claim for fines or the innocent party's claim for damages in the case.
- (3) A suspect's entire property or part thereof, including any property acquired subsequently by the suspect, can be seized if -
- 1) a charge has been made for an offence for which the potential statutory penalty is imprisonment for one year and six months or more, and
 - 2) the accused has evaded further prosecution in the case.
- (4) Notices in writing or the like, originating from a person who is precluded pursuant to the rules of Section 170 from giving evidence as a witness in the case cannot be seized from a suspect. The same applies to material originating from a person falling within the scope of Section 172 when the material contains information concerning which the person is exempted from giving evidence as a witness in the case pursuant to Section 172.

Section 803. (1) Objects at the disposal of a non-suspect can be seized as part of the investigation of an offence liable to public prosecution if it can reasonably be presumed that the object can serve as evidence, should be confiscated or forfeited or, through the offence, has been swindled out of somebody who can claim it back. Other assets, such as money, at the disposal of a non-suspect can be seized as part of the investigation of an offence liable to public prosecution if it can reasonably be presumed that such assets should be confiscated or forfeited. Section 189 applies correspondingly.

(2) Notices in writing between the suspect and any person who is precluded pursuant to Section 170 from giving evidence as a witness in the case and such person's notes and the like concerning the suspect cannot be the subject of seizure from such person. Material containing information on matters concerning which any person who falls within Section 172 is exempt from giving evidence as a witness pursuant to Section 172 cannot be the subject of seizure from such person.

Section 804. (1) As part of the investigation of an offence, which is indictable by the State, a person who is not a suspect can be ordered to produce or surrender objects (disclosure), if there is reason to presume that an object, of which the individual has possession, can serve as evidence, should be confiscated or by the offence has been purloined from somebody who can claim it back.

(2) If an object has been surrendered to the police following an order of disclosure, the rules of seizure pursuant to Section 803 (1) similarly apply.

(3) If an object, without an order to this effect, has been handed over to the police due to the reasons

mentioned in Subsection (1), then Section 807 (5) applies. If a request of return is made, and the police do not grant the request, the police shall as soon as possible, and at the latest within 24 hours, bring the case before the court with a petition for seizure. In this case Section 806 (3), 2nd period, and (5), 1st period, apply.

(4) An order of disclosure cannot be issued if it will produce information about matters, which the individual would be excluded or exempted from testifying about as a witness pursuant to Sections 169-172.

(5) The Minister of Justice can issue rules about financial compensation in special cases or costs relating to fulfilment of orders of disclosure.

Section 805. (1) Seizure must not take place, and orders of disclosure must not be issued, if the measure is disproportional considering the significance of the case, and the loss or the inconvenience, which the measure can be presumed to cause.

(2) If the purpose of the measure can be attained by less invasive measures, including by posing a collateral, a written agreement to this effect can be made with the individual against whom the measure is directed.

250

(3) As for seizure as a security for the claim of the State for costs, claim for confiscation pursuant to the Criminal Code Section 75 (1), 1st period, 2nd part, and 2nd period, and (3), Section 76a (5), and Section 77a, 2nd period, claims for fines or the claim of the victim for compensation, the rules of Sections 509-516 similarly apply.

Section 806. (1) Decision about seizure and orders of disclosure are made upon request of the police. Request of seizure to secure a claim for compensation can be made by the victim as well.

(2) The decision is made by the court in the form of an order, cf., however, Subsection (7). The court order shall state the specific circumstances in the case upon which it is based, that the conditions for the measure are fulfilled. The court order can at any time be reversed.

(3) If the purpose of the measure would be forfeited if a court order were to be awaited, the police can make the decision about seizure, cf., however, Subsection (4). Upon request from the individual, against whom the measure is directed, the police shall as soon as possible, and at the latest within 24 hours, bring the case before the court, which in the form of an order decides if the measure can be approved.

(4) Seizure pursuant to Section 802 (3) can only take place according to a court order. The same applies to seizure of printed works or sound or picture programmes included under the Law of Media Responsibility, which contents causes for responsibility to be imposed.

(5) Before the court makes a decision pursuant to Subsection (3), 2nd period, the person against whom the measure is directed shall have had the opportunity to make a statement. Section 748 (5) and (6) similarly apply.

(6) Before the court makes a decision about disclosure pursuant to Section 804, the person, who has possession of the object, shall have had the opportunity to make a statement. Section 748 (5) and (6) similarly apply. The rule of the 1st period does not apply if the decision of the court is intended as the basis for an international request of disclosure.

(7) Decision of seizure is made by the police if the person, against whom the measure is directed, grants a written consent to the measure.

Section 807. (1) The police carry out seizures. If seizure takes place based on a court order, this order shall, upon request, be shown to the person, against whom the measure is directed. If seizure takes place pursuant to the rule of Section 806 (3) the police shall advise the individual of the access to have the matter brought before the court .

(2) The police ensure, by contacting the person against whom the measure is directed, that an order of disclosure is complied with. The order of the court shall, upon request, be shown to the individual. If, without valid excuse, the individual refuses to comply with the order, the rule of Section 178 similarly applies.

(3) If material is seized from persons, who are included in Section 172, the individual can demand that the first examination of the material be done by the court. Section 806 (5), 1st period, similarly applies as for the examination by the court. Until the first examination can take place the material is kept by the police.

(4) If the court has issued an order about seizure of all or a part of a property, pursuant to Section 802 (3), the police shall provide for the appointment of a guardian to administrate the seized property. The police shall register the court order about seizure according to the rules of the Law of Registration

Section 48. The court order is served the defendant according to the rules in Section 159.

(5) Objects, which come into police custody as a result of seizure or orders to surrender, shall as soon as possible be recorded and marked. The police shall, upon request, issue a receipt for the reception.