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Business and human rights

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Denmark

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1. What kind of judicial protection do I have in your country as a victim of business- related human rights violations? Does this protection include compensation?

Judicial protection against human rights violations is enshrined in the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and the Constitutional Act of the Kingdom of Denmark (*Danmarks Riges Grundlov*). No distinction is made between business related and non-business related human rights violations.

The European Convention on Human Rights

The European Convention on Human Rights was transposed into Danish law by Act No 285 of 29 April 1992. According to Danish case-law, public authorities may be liable to pay compensation for any infringement of the European Convention on Human Rights in respect of financial or non-financial damages. This liability is objective according to Danish case-law, and the general principles of Danish compensation law also apply.

The Charter of Fundamental Rights of the European Union

All Danish authorities must respect the Charter of Fundamental Rights of the European Union when they implement EU law. The Danish courts must also provide the requisite access to justice in order to safeguard the effective protection of rights in areas subject to EU law. This includes the Charter of Fundamental Rights of the European Union.

The Constitutional Act of the Kingdom of Denmark

Chapters VII and VIII of the Danish Constitution contain a number of freedoms and human rights. The personal freedoms involve protection of personal liberty (§ 71), the home and privacy (§ 72), the right of property (§ 73), freedom of religion, and the right not to be discriminated against (§ 67, § 68 and § 70). The political freedoms relate to freedom of speech (§ 77), freedom of association (§ 78), and freedom of assembly (§ 79). The Constitution also includes a right to free and equal access to trade (§ 74), the right to public assistance (§ 75), and the right to free elementary education and freedom of school choice (§ 76).

In § 73 of the Constitution, a legal basis is laid down for the right to full compensation for expropriation, which is paid out in respect of the financial loss suffered as a result of expropriation.

2. Do you have specific rules for gross human rights violations? Do these rules apply to environmental crimes or severe labour exploitations?

There are no specific rules for gross human rights violations, either nationally or internationally. The principle of proportionality does, however, play a role in assessing human rights violations, including the grossness of a violation. Judicial protection against human rights violations is enshrined in the European Convention on Human Rights, the Charter of Fundamental Rights of the European Union, and the Constitutional Act of the Kingdom of

Denmark.

3. I am the victim of a human rights violation resulting from activities carried out outside the European Union by a European transnational corporation. Do I have access to the courts in your country if I am not an EU citizen or I don't live in the EU? Under what conditions can I claim a violation of my rights? Where can I find additional information?

Essentially, all private individuals in Denmark can bring a case before the national courts. This applies both to EU citizens and non-EU citizens. Further information about guidance for bringing a case before the courts is available at <https://domstol.dk>.

4. Can ombudsman institutions, equality bodies or national human rights institutions support victims of business-related human rights violations committed by European transnational corporations outside the European Union? Can these bodies investigate my case if I am not an EU citizen or I don't live in the EU? Are there other public services (such as a labour or environmental inspectorate) in your country that can investigate my case? Where can I find information about my rights?

The national human rights institute in Denmark, the Danish Institute for Human Rights (*Institut for Menneskerettigheder*), aims to promote and protect human rights, including among other things advising the Danish Parliament (*Folketinget*), the Danish Government, other public authorities and private stakeholders about human rights and managing information about human rights. The Danish Institute for Human Rights may also help victims of discrimination to have their discrimination appeals processed, paying due consideration to the rights of the victims, associations, organisations and other legal persons.

The Danish Parliamentary Ombudsman essentially only deals with complaints about public administration.

There are separate mechanisms in Denmark for processing cases relating to business related human rights violations, including the Danish courts, the Labour Court (*arbejdsretten*), the National Board of Industrial Injuries (*Arbejdsskadestyrelsen*), the Board of Equal Treatment (*Ligebehandlingsnævnet*), the Mediation and Complaints-Handling Institution for Responsible Business Conduct (*Mæglings- og klageinstitutionen for ansvarlig virksomhedsadfærd*) (MKI), and others. In the labour market, confidential conciliation is sometimes entered into between the parties to cases that may be relevant to human rights.

5. Does your country impose obligations on European transnational corporations to establish complaint mechanisms or mediation services for violations resulting from their business activities? Do these obligations also apply to violations that occur outside the European Union? Who is in charge of monitoring these activities in your country? Are there public reports available providing information on the functioning of the system?

Under Danish law, European transnational corporations are not obliged to establish complaint mechanisms or mediation services for violations resulting from their business activities.

Denmark has established by law the Mediation and Complaints-Handling Institution for Responsible Business Conduct (MKI), which works to create a framework for mediation, dialogue, and conflict resolution.

The MKI is Denmark's national OECD contact point, and it has the task of handling complaints about potential

irresponsible conduct, among other things, by Danish companies in Denmark and abroad, for example through a company's business relationships, and of offering mediation between the injured party and the party that is the subject of the complaint. The MKI handles complaints and can offer mediation in cases concerning violations of the OECD Guidelines for Multinational Enterprises, including cases concerning human rights, workers' rights, international environmental standards, and corruption.

The MKI publishes annual reports on its work, including complaints that it has processed and any mediation processes. When it handles a complaint, the MKI may also issue public statements that could, for example, include criticism of a company's conduct.

The MKI is an independent institution that has a mandate to examine cases on its own initiative, but it does not supervise the activities of Danish companies.

6. Do I have specific rights if I am a vulnerable victim seeking a remedy for business-related human rights violations? Can I have access to legal aid, and under which conditions? Which costs will be covered by the legal aid? Do I have access to legal aid under the same conditions if I am not an EU citizen or I don't live in the EU?

People who are victims of a business related human rights violation do not have any specific rights (please see question 1). There are two kinds of State-funded legal aid in Denmark: free proceedings [*fri proces*] and public legal aid [*offentlig retshjælp*]. There is no requirement to be a Danish national or an EU citizen in order to obtain legal aid.

Free proceedings

If the applicant's application for free proceedings is upheld, all of the applicant's costs will be covered by the State. It follows that, among other things, one of the conditions for free proceedings is that the applicant's income does not exceed the income limit laid down in § 325(3)-(5) of the Administration of Justice Act (*retsplejeloven*), and that the applicant does not hold a legal-aid insurance policy or other insurance policy that covers the costs of the case. The income limits are increased every year; please see § 328(2) of the Administration of Justice Act. In 2019, therefore, a single applicant's income may not exceed DKK 329 000; for applicants who are part of a couple, the couple's total income may not exceed DKK 418 000.

In addition to this, another condition is essentially that the applicant must be considered to have reasonable grounds for pursuing the case; please see § 328(2) of the Administration of Justice Act.

Nevertheless, § 327 of the Administration of Justice Act does list a number of special kinds of case where there is no condition for the applicant to have reasonable grounds for pursuing the case. In such cases, free proceedings must be granted whenever the applicant fulfils the financial conditions laid down in § 325. This will not, however, necessarily mean that the applicant will have his/her case upheld; please see § 327(4).

Public legal aid

There are three steps for legal aid; please see § 323 of the Administration of Justice Act and Executive Order (*bekendtgørelse*) No 1503 of 18 December 2019 on Public Legal Aid with a Lawyer. Everyone is entitled to very basic (and free) verbal advice on legal matters that are important for a dispute, and on the practical and financial options for pursuing a case (step 1).

People who fulfil the financial conditions for free proceedings are also entitled to some free legal aid in the form of advice and the preparation of individual written enquiries, including applications for free proceedings, etc. (step 2). In the event of a dispute where there is considered to be a prospect of the case being closed through conciliation with the additional assistance of a lawyer, the person in question is also entitled to some free legal aid from a lawyer (step 3).

The fee for legal aid from a lawyer at step 2 was DKK 1 040 (including VAT) in 2019. The State pays 75 % of this amount, but the legal-aid applicant pays the rest. The fee for legal aid from a lawyer at step 3 is DKK 2 390

(including VAT). The State and the legal-aid applicant each pay half. The State does, however, pay the full fee for legal aid connected to an application for free proceedings.

Essentially, however, no subsidy may be sought from the State for legal aid at steps 2 and 3 if it is clear from the outset that the case cannot be dealt with within the limits of the amount of DKK 1 040 or DKK 2 390 respectively. Furthermore, a subsidy from State funds for legal aid at steps 2 and 3 only includes fees that are not covered by a legal-aid insurance policy or other kind of insurance policy.

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