Access to justice at Member State level

1.1. Legal order – sources of environmental law

1) General introduction to the system of protection of environment and procedural rights of persons (natural, legal, NGOs) in the specific national order

The Danish Constitution from 1953 does not enshrine a right to a clean environment or healthy environment. Thus, the protection of the environment relies on the relevant legislation at national and EU level and to some extent also case law regarding nuisance etc. The procedural rights of access to courts for individuals and others in relation to administrative decisions by the authorities is established in Sec. 63 of the Constitution. There are no administrative courts in Denmark. However, administrative appeals boards have traditionally provided an alternative option for independent review of administrative decisions within the environmental legislation, primarily the Environment and Food Appeals Board and the Planning Appeals Board. The Energy Appeals Board may also address issues of environmental law, e.g. environmental assessment requirements related to energy facilities. The administrative appeal system in general provides an easily accessible option for access to justice in environmental matters both for individuals and NGOs.

The Danish Parliament (Folketinget) has the legislative powers to adopt environmental legislation. It is a one-chamber system with 179 members of Parliament.

Several ministries have responsibilities relating environmental matters in a broad sense, including issuing executive orders. The Ministry of Environment has the main responsibilities as regards environmental issues, including protection of nature, water, air etc. The Ministry of Climate, Energy and Utilities has responsibilities regarding climate and energy issues as well as water and waste utility regulation. The Ministry for Food, Agriculture and Fisheries has responsibilities regarding general environmental regulation of agriculture. The Ministry of Internal Affairs and Housing holds responsibilities regarding land use planning and the Planning Act and the Building Act, while the Ministry of Transport has responsibilities regarding transport infrastructure. The Ministry of Industry, Business and Financial Affairs has the overall responsibility as regards the secretariat of the administrative appeals boards. The appeals boards, however, operate independently from the Ministry when deciding cases.

2) Constitution

Sec. 63 in the Danish Constitution of 5th June 1953 establishes that any questions about the limits of public authority can be brought to the courts. It also states that a court case will in general not suspend the administrative decision. However, the court may in specific circumstances grant suspensive effect while the case is pending.

It is not specified in Sec. 63 who can take such cases to a court. This is determined by the standing requirements applied by the courts. The decisive standing criterion is the existence of a legal interest, see below 1.4.

As mentioned above, there are no constitutional rights for protection of the environment in Denmark.

3) Acts, Codes, Decrees, etc.

The main rules on access to justice in environmental matters are to be found in the relevant pieces of environmental legislation. A distinction must be drawn as regards access to the (general) courts and access to the administrative appeal boards. As regards access to courts, the relevant legislation generally establishes a time-limit of 6 months for bringing an appeal to the courts. As regards access to the administrative appeal boards, the

legislation generally establishes a time-limit of 4 weeks for bringing an administrative appeal. Furthermore, the relevant legislation specifies what can be appealed and by whom. The main environmental acts include:

Act on Nature Protection: Lovbekendtgørelse nr. 240/2019 af lov om naturbeskyttelse

Act on Planning: Lovbekendtgørelse nr. 1157/2020 af lov om planlægning

Act on Environmental Protection: Lovbekendtgørelse nr. 1218/2019 af lov om miljøbeskyttelse

Act on Environmental Assessment: Lovbekendtgørelse nr. 973/2020 af lov om miljøvurdering af planer og programmer og af konkrete projekter

Act on Environmental Liability: Lovbekendtgørelse nr. 277/2017 af lov om undersøgelse, forebyggelse og afhjælpning af miljøskader (miljøskadeloven)

More general legislation on procedures etc. includes:

Access to courts:

Act on Administration of Justice: Lovbekendtgørelse nr. 938/2019 af lov om retspleje

Access to appeal boards:

Act on Environment and Food Appeals Board: Lov nr. 1715/2016 om Miljø- og Fødevareklagenævnet

- Statutory Order on procedures: Bekendtgørelse nr. 131/2017 om forretningsorden for Miljø- og Fødevareklagenævnet

- Statutory Order on fees for appeals: Bekendtgørelse nr. 132/2017 om gebyr for indbringelse af klager for Miljø- og Fødevareklagenævnet

Act on Planning Appeals Board: Lov nr. 1658/2016 om Planklagenævnet

- Statutory Order on fees for appeals: Bekendtgørelse nr. 108/2017 om gebyr for indbringelse af klager for Planklagenævnet

- Statutory Order on procedures: Bekendtgørelse nr. 130/2017 om udnyttelse af tilladelser, frist for indgivelse af klage, indsendelse af klage til Planklagenævnet og opsættende virkning af klage for visse afgørelser truffet efter lov om planlægning og visse andre love

4) Examples of national case-law

Case law from the Danish courts regarding access to justice in environmental matters is somewhat limited. Some examples as regards access of NGO's and citizen groups include:

U2012.2572H (Østerild): The Supreme Court case concerned the granting of suspensive effect in a case where an NGO and affected citizens challenged the Act on a national wind turbine test centre (647/2010). The Supreme Court confirmed the ruling of the Western High Court rejecting the granting of suspensive effect based on a balancing of the interest in not postponing the implementation of the law against the interests of the appellants. As regards the right of access, the Western High Court accepted right of access the ad-hoc organization (National Organisation for a Better Environment). The high court made reference to the number of members (more than 200), to objections raised during the parliamentary process, and to the fact that the organization would have had a right to administrative appeal if the test centre had been established by an administrative decision.

U2009.2706H/MAD2009.1612H (Kyndby Huse): The right of appeal of an ad-hoc citizens group (Citizens for Offshore Turbines in Marine Areas on its own and as representative of individual citizens) against the Nature Protection Appeal Board regarding EIA-decisions for two test turbines on land was not disputed, but their claim was unsuccessful (costs: 250,000 DKK). In U2009.1785H, the claim of the organization against the project developer was dismissed as the project was abandoned.

U2005.2143H/MAD2005.537H: The Supreme Court dismissed the claims raised by a citizens group against the

Metro Company partly as not addressing an issue of law, and partly as not being sufficiently precise.

MAD2004.1360Ø: A local citizens group claim against the Nature Protection Appeal Board regarding EIA of the Metro project was not granted suspensive effect.

U2001.1594V/MAD2001.539V: The Western High Court acknowledged the right of appeal of the Danish Anglers Association regarding a decision to reintroduce beavers in Denmark.

MAD2003.602Ø: Standing of an ad-hoc local citizens group (Amager against Superficious Malls) was not disputed, but they were unsuccessful in their claim against the Nature Protection Appeal Board regarding plans for a new shopping centre (costs: 50.000 DKK)

U2000.1103H./MAD2000.83H: A claim raised by the Danish Cyclist Association regarding lack of EIA of a road project was successful in the Supreme Court. The standing of the association was not disputed in the case and was not discussed by the courts ex officio.

U1994.780Ø: Greenpeace Denmark was accepted as having a sufficient legal interest in a claim against the Ministry of Transport regarding EIA of the Øresund-bridge project.

5) Can the parties to the administrative procedure directly rely on international environmental agreements, or can only the national and EU transposing legislation be referred to?

International agreements are only considered part of Danish law if they have been incorporated into statutes or other official statements of national law (the dualist approach). This means that international agreements cannot be relied upon directly before the courts or administrative bodies. They may, however, be called upon as important elements for the interpretation of Danish law. Furthermore, those international agreements to which the EU is a party – such as the Aarhus Convention – may, in accordance with EU law, be directly applicable in the Member States if the provisions are sufficiently clear and precise. Under such circumstances courts and administrative bodies are obliged to apply international agreements directly.

1.2. Jurisdiction of the courts

1) Number of levels in the court system

The Danish court system is a general court system where the courts adjudicate civil, administrative and criminal cases. The court system consists of three levels:

- District courts (24)
- High courts (2)
- The Supreme Court

Since 2007, a case will normally start in a district court with appeal option to the Western or Eastern High Court. A district court may, however, refer cases on matters of principle or more complex issues to the high courts. In such cases, an appeal can be made to the Supreme Court as second instance. Third instance appeals to the Supreme Court may also be accepted in special circumstances by the Appeals Permission Board.

The Supreme Court consists of one president and 17 Supreme Court judges. Court rulings are normally made by a minimum of five judges. The Eastern High Courts consist of one president and 59 judges, whereas the Western High Court consists of one president and 38 judges. The high court cases are in general decided by three judges. In criminal cases, laymen or juries may supplement the court judges. The district court cases are normally decided by one judge. In more complicated or important civil and administrative cases three judges may participate in the case. In criminal cases, two laymen or six jury members may supplement the district court judge(s).

2) Rules of competence and jurisdiction

Denmark has a system of ordinary – or general – courts dealing with both criminal and civil cases, including cases challenging administrative decisions. There is no constitutional court and no administrative courts. Consequently, there are no specialised environmental courts in Denmark. There are, however, quasi-judicial administrative appeals boards which, to some extent, are comparable to environmental courts, see further below. In general, it is not a requirement that administrative appeal is exhausted before a case can be taken to the ordinary courts.

3) Specialities as regards court rules in the environmental sector

As regards the general courts, there is no specialisation or use of expert judges in environmental matters.

The administrative appeals boards in the environmental sector have a varying degree of specialisation, including laymen and expert members, see further below 1.3.3.

4) Level of control of judges in case of administrative appeals, concept of own motion, what are its limits? Rules on court action on its own motion

In administrative matters the role of the courts is to oversee the public authorities. This includes judicial review of the procedural and substantive legality of administrative decisions or omissions, i.e. matters regarding legal basis, competence, procedure, and compliance with general principles of law. Review of the merits or discretionary elements of administrative decisions is in principle not excluded, but the courts are generally reluctant to review the discretionary powers of administrative authorities.

The courts apply the adversarial principle relying on the claims and arguments brought forward by the parties to the case. In general, they cannot act on their own motion. A court may, however, ask the parties to elaborate on matters that it finds important to the case. In district court cases where a party is not represented by a lawyer, the court may give advice on how the party can inform the case and safeguard his/her interests, cf. Act on Administration of Justice Sec. 339.

1.3. Organisation of justice at administrative and judicial level

1) System of the administrative procedure

Most environmental decision-making rests with the local authorities – the 98 municipalities. In a few areas decisions are made by the relevant minister – in practice by ministerial agencies such as the Environmental Protection Agency (Miljøstyrelsen), the Coastal Authority (Kystdirektoratet) or the Energy Agency (Energistyrelsen).

Such administrative decisions can in general be appealed to the administrative appeal boards – or to the courts. In case of administrative appeals, the appeal will in most cases first be presented to the authority who made the decision allowing a reconsideration of the decision.

It is also possible to submit a complaint to the Parliamentary Ombudsman. This is, however, only possible if other options of administrative appeals, e.g. to the appeals boards, have been exhausted. If a decision has been made by a ministerial agency it might in some specific circumstances be possible to make a complaint to the minister, in particular regarding access to environmental information that are not related to administrative decisions.

2) How can one appeal an administrative environmental decision before court? When can one expect the final ruling?

An appeal of an administrative decision to the general courts must in general be made within 6 months. This time-limit is stipulated in the relevant environmental legislation. An appeal must be submitted in writing in accordance with the rules laid down in the Act on Administration of Justice.

It is difficult to estimate when one can expect a final ruling. The time frames may vary from one district court to another. In 2019 the average time frame in civil cases in the Supreme Court was 11 months, while the time frames in the high courts depend upon whether it is first instance cases or appeal cases.

3) Existence of special environmental courts, main role, competence

As mentioned above, there are specialised administrative appeals boards in Denmark. They do not belong to the court system, but are established as independent appeals boards within the administrative system. Since February 2017 the administrative appeals boards have a joint secretariat in the Appeals Board Agency (Nævnenes Hus) organisationally placed within the Ministry for Industry, Business and Financial Affairs (Erhvervsministeriet). The composition of the boards varies depending upon the types of cases and the relevant legislation.

With effect from February 2017, as a consequence of a reshuffle of the Government, the former Nature and Environment Appeals Boards was divided into two separate appeals boards: the Environment and Food Appeals

Board and the Planning Appeals Boards.

Administrative decisions made under a broad range of environmental legislation, including the Environmental Protection Act, the Nature Protection Act and the Environmental Assessment Act can be made to the Environment and Food Appeals Board. Whereas decisions under the Planning Act can be appealed to the Planning Appeals Board. The relevant legislation determines who can appeal and which decisions can be appealed to the boards. In general, there is broad access to appeal by individuals as well as NGOs.

The Environment and Food Appeals Board is a so-called 'combination board' in the sense that the composition of the board may differ from one type of case to another. In essence the board has two distinct configurations:

- a lay configuration consisting of a chairman (qualified as judge), two high court judges and four lay members appointed by Parliament, or
- an expert configuration consisting of a chairman (qualified as judge), two high court judges and (in general) two experts. There are eight different expert "groups" depending upon the topic of the case, e.g. industry, soil pollution, groundwater and water supply, freshwaters, marine waters, agriculture, food or veterinary topics.

The Planning Appeals Board has one configuration consisting of a chairman (qualified as judge), one high court judge, five expert members and four lay members.

For both boards, the chairman and the expert members are appointed by the Minister for Business for a period of four years. The lay members are appointed by the Parliament, whereas the two high court judges are appointed by the high courts among their judges.

In the Environment and Food Appeals Board the lay board mainly deals with appeals related to nature protection, while the expert board mainly deals with appeals related to pollution issues. The board has a fairly wide discretion to delegate decision-making to the chairman. It is possible that in special cases the board configurations may join into one combined board. It is also possible that an appeal case in special circumstances may be transferred from one configuration to another.

If you wish to challenge an administrative decision made by the authorities it is in most cases possible to choose between the administrative appeal system, i.e. the appeals boards, or the general courts. Access to the appeals boards is easy and cheap. An appeal must be submitted in writing to the authority that made the decision within four weeks from when the decision was announced. The authority is obliged to consider whether it will change the decision in view of the appeal. If not, it must forward the appeal to the Appeals Board together with relevant information.

A minor fee (2017-: 900 DKK (approx. 120 EUR) for individuals and 1.800 DKK (approx. 241 EUR) for organisations and businesses) has to be paid. The fee will be reimbursed if the appeal is wholly or partly successful. There are no requirements as to the formulation of the appeal, but the digital complaints system must be used. The appeals boards must provide the necessary information for making a decision in the case. Unless explicitly limited by law the appeals boards can make a full review of the administrative decision, including matters of legality as well as discretionary matters (merits). The appeals boards may use cassation and return an invalid decision to the authority or, in the case of a full review, replace the decision with a new decision on the merits (reformatory). A decision of an appeals board can be brought to the courts normally within 6 months.

4) Appeal against environmental administrative decisions delivered by competent authorities and appeal against Court orders and decisions (levels)

As mentioned above, an appeal against an administrative decision by local authorities or ministerial agencies can in general be made either to the administrative appeals boards or to the general courts. In some circumstances access to administrative appeals is cut off, including in general supervisory decisions on environmental matters as well as some specific types of decisions, e.g. wastewater plans. A decision by the administrative appeals boards can be appealed to the general courts – normally to the district courts and with the option for a second appeal to the high courts. Third instance appeals to the Supreme Court may also be accepted in special circumstances by the Appeals Permission Board. A district court may refer cases on matters of principle or more complex issues to the high courts. In such cases, an appeal can be made to the Supreme Court as second instance.

The illustration below illustrates how administrative decisions made by local authorities or ministerial agencies can be appealed in general.

Local authorities
(decision)
Ministerial agencies
(decision)
Appeals Boards
District courts (24)
High courts (2)
Supreme Court

5) Extraordinary ways of appeal. Rules in the environmental area. Rules for introducing preliminary references.

In general, there are no extraordinary ways of appeal in the Danish court system, apart from the option of applying for a third instance appeal in the Supreme Court. The parties of a court case can make a request for a preliminary reference to be made to the Court of Justice of the European Union or the court can make a preliminary reference on its own initiative in accordance with Art. 267 TFEU. If a request for preliminary reference is made by the prosecutor in a criminal case or by a state authority in a civil case a statement from a special committee within the Ministry of Justice will be obtained.

The Danish appeals boards, including the Environment and Food Appeals Board, do not consider themselves capable of making preliminary references to the CJEU – primarily due to the members (apart from the high court judges) being appointed by the minister for a limited period of four years), see also the ruling of the CJEU in C-222/13 TDC.

6) Are there out of court solutions in the environmental area as regards solving conflicts (mediation, etc.)?

The Act on Administration of Justice establishes a system for mediation within the court system upon the request of the parties of a civil case. In such cases, the court will offer mediation as an alternative to an ordinary court procedures if the court considers that the case is suitable for mediation.

Apart from the general mediation option, there are no specific out of court solutions in the environmental area.

7) How can other actors help (ombudsperson (if applicable), public prosecutor), accessible link to the sites?

Apart from the option of appeal to the administrative appeals boards and the courts it is also possible to bring an administrative decision to the Ombudsman. Furthermore, questions regarding the supervisory powers of local and regional authorities can be brought to Appeals Agency (Ankestyrelsen). Finally, if a person or NGO considers that a criminal offense has been made by violation of environmental legislation, it is possible to report the matter to the police/public prosecutor.

The Ombudsman may raise cases on his own initiative or respond to complaints being brought to him, according to the Ombudsman Act. It is up to the Ombudsman to determine whether a complaint should lead to further investigations. It is a requirement that the options for administrative appeal have been exhausted before bringing a case to the Ombudsman. The Ombudsman cannot make decisions with legally binding effect. He can raise criticism of and make recommendations to the authorities.

The Appeals Agency may receive complaints regarding municipal and regional authorities – but only if there are no options for administrative appeal according to the Act on Municipal Government. The Agency determines whether a complaint should lead to further investigations. It may review the legality of acts or omissions. The Agency may also issue a guiding opinion on the matter – it cannot replace the decision in question. It may, however, annul or suspend clearly illegal decisions.

The public prosecutor determines whether there is a basis for initiating criminal proceedings before the courts. There is no specialized prosecutor in environmental matters in Denmark. In general, there are rather few environmental criminal cases in Denmark and the sanction level (fines or imprisonment) is fairly low. There are

generally no options for private criminal prosecution in environmental matters. This has to be established specifically by law.

Administrative inaction or omissions can, in principle, be subject to complaints to the Ombudsman, the Appeals Agency, or be reported to the public prosecutor. Administrative inaction or omissions can presumably also be challenged before the courts. If no administrative decision has been made it is generally not possible to lodge an appeal within the administrative appeal system – unless the inaction can be equated with a decision. In some circumstances a complaint can be made to a superior authority, e.g. to the minister regarding omissions of a ministerial agency.

1.4. How can one bring a case to court?

1) Who can challenge an environmental administrative decision (relevance of the concept of concerned public and NGOs)?

The general terminology regarding standing or access to justice in Denmark is the concept of "legal interest." In relation to *court procedures,* the concept of legal interest is not defined in legislation, but it is most often interpreted as having a sufficient individual and significant interest. This does not, however, exclude standing for organizations. There is no actio popularis in Denmark giving everybody access to courts. The courts may determine on a case by case basis whether a claimant has a sufficient legal interest. It is generally accepted that the group of persons and NGOs that have a right to administrative appeal will also be considered to have a sufficient legal interest to bring the case to the courts.

In relation to the *administrative appeal system* in environmental matters, the relevant legislation specifies who has access to appeal to the administrative appeals boards. The legislation was amended and to some extent streamlined in 2000 with the purpose of implementing the Aarhus Convention (Act no. 447/2000). The legislation provides access for both individuals and certain NGOs, in particular ENGOs. In general, the rules on access to administrative appeal do not distinguish between the public concerned and the public in general. Rather, it relies on the term of "legal interest" which may be interpreted differently depending upon the topic of case.

2) Are there different rules applicable in sectoral legislation (nature conservation, water management, waste, EIA, IPPC/IED, etc.)?

The rules on who has access to administrative appeal differ from one area to another. It is specified in the relevant sectoral legislation who has access to administrative appeals and what decisions that can be appealed, see further below. There are, however, no specific rules as regards who has access to the courts.

3) Standing rules applicable for NGOs and individuals (in administrative procedure and at judicial level, for organisations with legal personality, ad hoc groups of representatives of the public, standing for foreign NGOs, etc.)

Legal standing for individuals in *the administrative appeal system* may range from a broad understanding of the concept of "legal interest" in matters regarding physical planning in the Planning Act, to a narrower understanding in the Environmental Protection Act of having "an individual, significant interest," whereas the Nature Protection Act for individuals only grants access to administrative appeal to the addressees (or others pertaining to a status as a party to the case).

Following the implementation of the Aarhus Convention in 2000, most environmental legislation stipulates the right of administrative appeal for NGOs. In general, nationwide NGOs having protection of nature and environment or recreational interests as their main purpose have access to administrative appeal. It is a requirement that the organization can present bylaws that document such a purpose.

Generally, local organizations or groups also have access to administrative appeal, however, with some variations from one area to another. According to the Environmental Protection Act local organizations must have requested to be notified about decisions in order to have access to administrative appeal. This is not a requirement according to the Nature Protection Act and the Planning Act.

Foreign NGOs are not explicitly referred to in the legislation as having access to administrative appeal. The Nordic Environmental Protection Convention from 1974 explicitly recognizes the principle of non-discrimination and grants

persons from the Nordic countries affected by a decision regarding environmentally harmful activities access to administrative appeal as well as to the courts on equal terms.

As mentioned above, legal standing in the *court procedures* is determined by the concept of legal interest on a case by case basis. In most cases the same circle as those having a right of access to administrative appeals will also have legal standing before the courts, both as regards individuals and NGOs.

In general, the courts apply a fairly liberal approach to groups and organizations representing individuals and generally accept such groups as having a sufficient legal interest depending upon the individual interests being represented. Whether foreign NGOs can raise a claim in the courts will most likely depend upon whether the NGO is affected or represents a sufficient legal interest in the case. Group or class actions on behalf of the interests of a group of persons have been possible since 01/01/2008 according to the Act on Administration of Justice Chap. 23a.

4) What are the rules for translation and interpretation if foreign parties are involved?

According to the Act on Administration of Justice Sec. 149, the court language is Danish, which means that documents etc. should be elaborated in Danish unless both parties and the court accepts a foreign language. Oral negotiations etc. will be translated if needed or requested, however, costs may be placed on the parties of the case in civil cases. Use of Nordic languages should in general be accepted.

1.5. Evidence and experts in the procedures

Overview on specific rules in administrative environmental matters, control of judge, calling for an expert in the procedure

1) Evaluation of evidence – are there any limits in obtaining or evaluating evidence, can the court request evidence on its own motion?

In civil court cases, the collection and presentation of evidence relies on the initiative of the parties to the case. The parties to the case may call witnesses and request expert opinions. There are no restrictions on what kind of evidence may be presented. However, the court will reject irrelevant evidence.

The court cannot request evidence on its own. But the court may ask the parties to elaborate on matters that it finds important to the case or encourage the parties to present evidence.

As public authorities, the administrative appeals boards have a duty to ensure that sufficient information is available for making a decision – the adversarial procedure. The boards may seek expert opinions. Expert opinions etc. cannot be requested by the parties in an administrative appeals case.

2) Can one introduce new evidence?

Evidence will normally be presented during the main negotiations, but it may also take place prior to the court negotiations depending upon the acceptance of the court. Prior to the court negotiations, the court may request the parties to present a statement regarding the evidence that will be presented in the case. Additional evidence may be permitted by the court.

In the administrative appeals boards there are no restrictions, in principle, as regards the supply of new relevant information to the boards.

3) How can one get expert opinions in the procedures? Publicly available lists and registries of experts.

A party to a court case may request expert opinions and also suggest specific experts, but it is the court that makes the final decision on whether to call an expert and who.

There are no official lists, but the Danish Technological Institute maintains a list of potential experts on technological matters.

3.1) Is the expert opinion binding on judges, is there a level of discretion?

Expert opinions are not binding on the court.

3.2) Rules for experts being called upon by the court

The court may call upon experts based on the request of a party, see below.

3.3) Rules for experts called upon by the parties

If a party requests an expert opinion he/she should make a suggestion for the questions to be asked. The opposing party will have the opportunity to comment on the suggestion and the court then approves the questions and appoints an expert. It is possible for the parties to pose additional questions to the expert and also to request another expert opinion on the same issue subject to approval by the court.

3.4) What are the procedural fees to be paid and when in relation to expert opinions and expert witnessing?

In general, there are no procedural fees related to expert opinions. The costs of the expert opinion will normally be borne by the party who has called for expert opinions as determined by the court and they should do so when the costs occurs. The court may, however, distribute the costs between the parties.

1.6. Legal professions and possible actors, participants to the procedures

1) Role of lawyers, compulsory or not, how to contact, publicly accessible internet link to registry or website of the bar, perhaps of specialised lawyers in the environmental field

In general, legal representation is not compulsory in administrative appeal or judicial procedures in environmental matters. In *administrative appeals*, the appeals board (or authority) has an obligation to ensure that the necessary information is available for making a decision. It is not necessary to have the assistance of a lawyer in administrative appeals even though a qualified lawyer may provide valuable assistance. In *court cases,* the courts rely on the claims and arguments brought forward by the parties to the case. In most cases it is recommended to seek qualified legal advice before bringing a case to the courts and also to be represented by a lawyer, e.g. from law firms that are either specialized or have specific and documented expertise in environmental matters. Also, the court may in some circumstances request legal representation if this is deemed necessary.

1.1 Existence or not of pro bono assistance

It is possible to apply for legal aid according to the Act on Administration of Justice. Normally, you have to fulfil certain criteria regarding maximum income (as of 01/01/2020: DKK 336,000 for a single income and 427,000 for a couple). In addition, your case needs to be reasonably justified. In environmental matters it is possible that legal aid may be granted on the basis of special circumstances alone. This may be fulfilled in cases dealing with matters of principle or matters of general public importance. Individuals as well as groups or organizations may apply for legal aid on the basis of special circumstances. Pro bono legal assistance can be provided by “legal clinics” or by law firms. However, this does not normally extend to environmental matters. There are no public interest environmental law organizations or lawyers in Denmark that offer legal advice to the public as such.

1.2 If pro bono assistance does exist, what are the main elements of the procedure to receive it

Applications for legal aid must be submitted to the Department of Civil Affairs.

2) Expert registries or publicly available websites of bars or registries that include the contact details of experts

A list of lawyers is available at advokatnoeglen.dk, where it is possible to select specialised lawyers within environmental matters.

3) List of NGOs who are active in the field, links to sites where these NGOs are accessible

There are no NGOs specialized in giving legal advice to private individuals regarding administrative appeals or court cases in environmental matters. Some Danish NGOs have significant expertise in environmental cases – most often in administrative appeals, e.g. the Danish Society for Nature Conservation, Danish Ornithological Association, Danish Outdoor Council and the Danish Anglers Association. Only few environmental court cases are initiated by NGOs, but they often use the administrative appeals system.

4) List of international NGOs, who are active in the Member State

Greenpeace, WWF, NOAH/Friends of the Earth

1.7. Guarantees for effective procedures

1.7.1. Procedural time limits

1) Time limit to challenge an administrative environmental decision (not judicial) by an administrative body (either superior or same level).

For administrative appeals, time limits may be set in the legislation. In most environmental legislation, a time limit of four weeks from the decision is set for appeals to the appeals boards.

The general time limit for to challenge an administrative environmental decision in court is 6 months. This time limit is stipulated in most environmental laws.

Regarding the time limit for appeals within the judicial system, the regular time limit of appeal from a district court to one of the high courts is four weeks. A decision by one of the high courts can be appealed to the Supreme Court within eight weeks.

In regard to the extraordinary appeal to the Supreme Court as third instance, this can only be granted in special circumstances, see above 1.3.4.

2) Time limit to deliver decision by an administrative organ

In general, there are no time limits for the administrative authorities to deliver a decision in environmental matters, apart from a general expectation to deliver a decision within reasonable time. One exception is the time limit of 90 days as regards screening decisions in EIA matters regarding so-called Annex II projects.

3) Is it possible to challenge the first level administrative decision directly before court?

It is possible to challenge first level administrative decisions directly before court, see above 1.3.2.

4) Is there a deadline set for the national court to deliver its judgment?

The ruling of the court must be given as soon as possible after the end of the court negotiations – in district courts and in high court appeals normally within four weeks, according to the Act on Administration of Justice Sec. 219, see also above 1.3.2 on the average time frames in civil cases.

5) Time limits applicable during the procedure (for parties, submitting evidence, other possible deadlines, etc.)

In judicial procedures different time limits apply mainly for the parties. As a general rule, it is the court who decides the different time limits and ex officio set out the progress of the case.

In civil cases, after the submission of an application a deadline of two weeks will normally be set for the defendant to submit a reply. The court will then decide whether a preparatory meeting will be held. The court will also decide whether further written statements should be submitted, including a description of the documents and evidence to be submitted during the main negotiations.

The court decides when the preparation ends. However, if this is not decided by the court, the preparatory meetings will end four weeks before the main negotiations in court start.

1.7.2. Interim and precautionary measures, enforcement of judgments

1) When does the appeal challenging an administrative decision have suspensive effect?

Regarding administrative appeals to the Environment and Food Appeals Board, it may vary to what extent an administrative appeal may have suspensive effect. In general, an appeal regarding a prohibition or an order will suspend the decision, whereas an appeal regarding a permit will not suspend the decision. The Appeals Board

may, however, decide otherwise when an appeal has been submitted.

2) Is there a possibility for an injunctive relief during the administrative appeal by the authority or the superior authority?

There are very few explicit rules on injunctive relief, e.g. Sec. 53 of the Environmental Assessment Act regarding administrative appeals.

3) Is there a possibility to introduce a request for such a measure during the procedure and under what conditions? Possible deadline to submit this request?

There are very few explicit rules on injunctive relief, e.g. Sec. 53 of the Environmental Assessment Act regarding administrative appeals.

4) Is there immediate execution of an administrative decision irrespective of the appeal introduced? Under what conditions?

This will depend upon whether the appeal has suspensive effect or not, see above section 1.7.2.1.

5) Is the administrative decision suspended once challenged before court at the judicial phase?

An appeal to the courts does not automatically suspend the administrative decision, as stated in the Danish Constitution Sec. 63. However, due to the particular circumstances of a case, the court may grant suspensive effect, which can be on the basis of a request from a party. In general, the courts are reluctant to grant suspensive effect and may, in some cases, request a safety deposit for the potential costs associated with suspending a decision and, thereby, a project. A court decision regarding suspensive effect or a court order can be appealed to a higher court. The court will balance the public interests of not suspending the decision on the one hand and the nature and scope of harm suffered by the appellants on the other hand.

6) Is there a possibility for the national tribunals to provide injunctive relief (conditional upon a financial deposit)? Is there separate appeal against this order on the injunctive relief or the financial deposit?

It is possible to request a court order to prevent action in a civil (private) lawsuit, according to the Act on Administration of Justice Ch. 40. A (temporary) court order may be conditional upon the payment of a financial deposit. The order can be subject to a separate appeal.

1.7.3. Costs - Legal aid - Pro bono assistance, other financial assistance mechanisms

1) How can one calculate what costs will be involved when one intends to initiate a procedure - administrative costs, judicial costs, costs for filing a case, experts' fees, lawyers' fees, cost of appeal, etc.

Fixed court fees apply within the court system for filing a case. The standard fee is DKK 500 (67 EUR). If a case has a value of more than 50,000 DKK (6,700 EUR) an additional fee of 250 DKK + 1.2 % of the value above 50,000 DKK (6,700 EUR) will apply. The maximum fee is 75,000 DKK (10,000 EUR) or 112,500 DKK (15,100 EUR) in the Supreme Court. In cases regarding administrative decisions, the maximum fee is 2,000 DKK. The fees apply in the preparatory phase after submission of an application. They will apply again if the case reaches the main negotiations. If a case is appealed, new fees will apply, including the standard court fee (750 DKK (100 EUR) in the high courts and 1,500 DKK (200 EUR) in the Supreme Court) and fees calculated on the basis of the value of the case if the value is above 50,000 DKK. Expert fees and lawyer fees will be determined by the court based on certain standard fees.

Within the administrative appeals system a standard fee of 900 DKK (120 EUR) for individuals and 1,800 DKK (241 EUR) for NGOs and companies apply in most cases. The fee is reimbursed if the claim is wholly or partially successful or if the appeal is rejected, see statutory order 132/2017 regarding the Environment and Food Appeals Board.

In general, the administrative appeals system is intended to fulfil the obligations of the Aarhus Convention to ensure fair, equitable, timely and not prohibitively expensive access to review of administrative decisions by independent appeals board. In situations where there is no access to administrative appeals, it may have been specified either in the legislation or in the preparatory works that the courts must ensure that costs are not

prohibitively expensive. This may also be the case even if there is access to administrative appeals, see e.g. the Act on Environmental Assessment Sec. 54.

2) Cost of injunctive relief/interim measure, is a deposit necessary?

The courts may request a deposit if they grant suspensive effect or injunctive relief. There are no additional procedural costs apart from the general court fees. There are no deposit requirements within the administrative appeal system.

3) Is there legal aid available for natural persons?

Within the court system it is possible to apply for legal aid according to the Act on Administration of Justice, see 1.6.1.1.

4) Is there legal aid available for associations, legal persons, NGOs with legal personality and without legal personality? If yes, how to request legal aid? Is there pro bono assistance?

Individuals, but under special circumstances also groups or organizations, may apply for legal aid on the basis of special circumstances according to the Act on Administration of Justice, see 1.6.1.1 above.

5) Are there other financial mechanisms available to provide financial assistance?

Private insurances often include coverage for some costs.

6) Does the 'loser party pays' principle apply? How is it applied by courts, are there exceptions?

In general, the 'loser pays principle' applies in court cases, cf. Act on Administration of Justice Sec. 312. The court may, however, in special situations decide that the losing party is not required pay the costs of the opponent, e.g. if the opponent is a public authority, or the case addresses a matter of principle. But there is no general exemption from 'the loser pays principle' in cases against public authorities and there are several examples of private claimants being ordered to pay the costs of public authorities.

7) Can the court provide an exemption from procedural costs, duties, filing fees, taxation of costs, etc.? Any other national characteristics linked to this topic?

According to the Act on Court Fees (Consolidated Act no. 1252/2014), court fees do not apply to those who are granted legal aid under the Act on Administration of Justice, or those who have a private insurance cover and fulfil the criteria for being granted legal aid.

1.7.4. Access to information on access to justice - provisions related to Directive 2003/4/EC

1) Where are the national rules on environmental access to justice available? Internet link to be provided. Are there other forms of structured dissemination?

The courts provide general information on access to the courts and a digital platform for filing a lawsuit is available together with further guidance. The administrative appeals boards provide information on how to submit an administrative appeal in environmental matters. In general, a digital platform must be used for administrative appeals. Furthermore, the Environmental Protection Agency provides information on access to justice in environmental matters.

2) During different environmental procedures how is this information provided? From whom should the applicant request information?

In general the applicant can request information from the relevant authorities.

3) What are the sectoral rules (EIA, IPPC/IED, regarding plans and programmes, etc.)?

There is no specific active dissemination on access to justice within sectoral rules. However, the environmental acts in general provide some details on administrative appeal procedures, e.g. Act of Environmental Assessment Sec. 52.

4) Is it obligatory to provide access to justice information in the administrative decision and in the judgment?

It is mandatory to provide information on appeal options in an administrative decision. If there is no option for administrative appeals, a decision must provide information on access to courts. There is no requirement to provide information regarding legal aid, in a decision or in a judgement.

5) Is translation, interpretation provided to foreign participants? What are the rules applicable?

There are no formal rules on translation etc. in administrative procedures and decisions. It does, however, follow from the general obligation to provide necessary guidance to the citizens according to the Act on Administrative Decisions (Forvaltningsloven), that an authority has certain obligations to provide translations or interpreters if this is necessary.[1]

1.8. Special procedural rules

1.8.1. Environmental Impact Assessment (EIA) - provisions related to Directive 2003/35/EC

Country-specific EIA rules related to access to justice

1) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

The rules on EIA are primarily implemented in the Act on Environmental Assessment (consolidated Act 973/2020). The Environmental Assessment Act stipulates that screening decisions can be appealed within four weeks to the Environment and Food Boards of Appeal (or the Energy Appeals Board). Anyone with a legal interest as well as NGOs representing at least 100 members can submit an appeal to the administrative appeals boards.

It is also possible to bring an appeal to the courts. In particular, this might be relevant in cases that are subject to specific rules such as state road or rail projects where there is no administrative appeal regarding EIA of such projects. In other cases, administrative appeals may be cut off.

2) Rules on standing relating to scoping (conditions, timeframe, public concerned)

Due to the fact that scoping is not a final administrative decision but a procedural decision, there are no specific rules on administrative appeals in the Environmental Assessment Act in relation to scoping. This does not, however, hinder appeals to the courts.

3) At what stage(s) can the public challenge the administrative decisions on environmental projects? Deadline to challenge decisions?

There is a general deadline of four weeks to challenge administrative decisions according to the Act on Environmental Assessment. This applies to screening decisions as well as the decision to grant a permit for the project. With respect to bringing a case to the courts there is a deadline of 6 months.

4) Can one challenge the final authorisation? Under what conditions, if one is an individual, an NGO, a foreign NGO?

The final EIA permit can be subject to administrative appeals in full by individuals as well as NGOs, including foreign NGOs. Anyone with a legal interest and also environmental NGOs representing at least 100 members may bring an appeal. It is also possible to challenge an EIA permit in the courts.

5) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion?

A decision to grant a permit under the Act on Environmental Assessment can be appealed in full to the administrative appeals boards, including procedural and substantive legality as well as the merits of the case. As regards the courts a full review can be carried out, but in general the courts will restrict themselves and not review the merits of a case.

6) At what stage are decisions, acts or omissions challengeable?

See above, section 1.8.1.3.

7) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is no legal requirement on the exhaustion of administrative appeals before bringing a case to the court.

8) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

In order to have standing before the national courts it is not necessary to participate in the public consultation phase of the administrative procedure.

9) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

This is not specified in the Danish legislation. The notion is in general associated with the administrative appeal system providing a broad and easy access to review of administrative decisions.

10) How is the notion of “timely” implemented by the national legislation?

This is not specified in the Danish legislation.

11) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?

According to Sec. 53 of the Environmental Assessment Act, the Environment and Food Appeals Board may issue an order to stop building or construction works. In general an appeal to the administrative appeals boards will not suspend a screening or permit decision unless the appeals board decides otherwise, cf. the Act on Environmental Assessment (Sec. 53). The appeals board may also order a project to be stopped if this is deemed necessary, cf. Sec. 53. Bringing a case to the court will not suspend the decision either unless the court decides otherwise.

1.8.2. Integrated Pollution Prevention and Control (IPPC)/Industrial Emissions Directive (IED) - provisions related to Directive 2003/35/EC

1) Country-specific IPPC/IED rules related to access to justice

The IED rules are primarily implemented in the Danish Act on Environmental Protection (Consolidated Act no. 1218/2019). Most decisions under the Environmental Protection Act can be appealed to the Environment and Food Appeals Board. The rules on administrative appeals in the Environmental Protection Act apply in parallel to the rules in the Environmental Assessment Act if separate decisions are made. An IED permit will, however, normally replace an EIA permit.

2) Standing rules, at what stages can one challenge decisions (if one is an NGO, a foreign NGO, a citizen)? Is the final decision challengeable?

Final IED decisions can be appealed to the appeals board within four weeks from the decision. Anyone with an individual and significant interest in the case can appeal the decision. ENGOs as well as certain specific organisations can appeal decisions. Local ENGOs can also appeal decisions if they have requested to be informed about such decisions.

Decisions determining that a permit is not required for the establishment or amendment of certain large-scale installations, including IED activities, can also be appealed to the Environment and Food Appeals Board, cf. Statutory Order 1534/2019. Supervisory decisions regarding baseline reports can also be appealed, but not decisions regarding baseline reports as part of an application process, cf. Statutory Order 1534/2019 Sec. 56.

There are no specific rules regarding judicial review by the courts apart from the general rule that appeals to the courts can be made within 6 months from the decision.

3) Rules on standing and access to justice relating to screening (conditions, timeframe, public concerned)

See above 1.8.2.2. Otherwise there are no specific screening rules related to IED projects apart from the rules on

EIA, see above.

4) Rules on standing relating to scoping (conditions, timeframe, public concerned)

See above 1.8.2.2. Otherwise, there are no specific scoping rules related to IED projects apart from the rules on EIA, see above.

5) At what stage(s) can the public challenge the administrative decisions on environmental projects? Is there a deadline to challenge decisions?

See above 1.8.2.2.

6) Can the public challenge the final authorisation?

In order to appeal a final permit according to the Environmental Protection Act to the appeals board, it is necessary to demonstrate an individual and significant interest or to be an NGO. There is no right of administrative appeals for the public as such. The courts are likely to set similar requirements for standing.

7) Scope of judicial review – control on substantive/procedural legality. Can the court act on its own motion? Is it possible to challenge decisions, acts or omissions?

The appeals board can make a full review of a permit, including procedural and substantive legality as well as the merits of the case. The appeals board can also review the scientific accuracy, request further information or call on additional expert advice. In general it is not possible to challenge omissions, e.g. decisions not to use the supervisory powers within the administrative appeal system. However, such issues can be brought to the supervisory authority (Appeal Agency)

As regards the courts, a full review can be carried out but in general the courts will restrict themselves and will not review the merits of a case. A court cannot act on its own motion.

8) At what stage are these challengeable?

See above, 1.8.2.2.

9) Before filing a court action, is there a requirement of exhaustion of administrative review procedures prior to recourse to judicial review procedures?

There is no requirement of exhausting administrative review procedures prior to bringing a case to the courts.

10) In order to have standing before the national courts is it necessary to participate in the public consultation phase of the administrative procedure – to make comments, participate at hearing, etc., not meaning the requirement determined under point 12?

There are no requirements of prior participation in order to gain standing before the courts. The general standing requirement of an individual and significant interest applies.

11) Fair, equitable - what meaning is given to equality of arms in the national jurisdiction?

This is not specified in the Danish legislation. The notion is in general associated with the administrative appeal system providing a broad and easy access to review of administrative decisions.

12) How is the notion of “timely” implemented by the national legislation?

There is no specific implementation of the notion “timely” into national legislation apart from the access to administrative appeals.

13) Is injunctive relief available? If yes what are the procedural requirements in order to be eligible for this? Are there special rules applicable to this sector apart from the general national provisions?

An administrative appeal to the appeals board of a permit will normally not suspend the decision unless the appeals board decides otherwise. Taking a permit into use during an appeal case is, however, at the responsibility

of the operator. There are no specific rules on injunctive relief.

14) Is information on access to justice provided to the public in a structured and accessible manner?

See above 1.7.4.

1.8.3. Environmental liability[2]

Country-specific legal rules relating to the application of the Environmental Liability Directive 2004/35/EC, Articles 12 and 13

1) Which requirements need to be fulfilled for natural or legal persons (including environmental NGOs) to have the decision taken on environmental remediation by the competent authority reviewed by a court or another independent and impartial body in accordance with Article 13(1) ELD?

Specific rules on appeals in relation to environmental liability are laid down in the Environmental Liability Act. The Act stipulates access to administrative appeals by anyone with an individual and significant interest as well as environmental NGOs. Local NGOs safeguarding the environment and nature as well as recreational interests also have access to administrative appeals. Those who have a right of administrative appeal also have a right to request a decision on whether there is an environmental damage under the relevant sectoral laws, e.g. the Environmental Protection Act.

There are no specific rules on access to review by the courts, on the general rules see above 1.4.

2) In what deadline does one need to introduce appeals?

An administrative appeal must be submitted within four weeks from the decision or public announcement.

An appeal to the courts must be submitted within 12 months from the decision or public announcement of the decision.

3) Are there requirements for observations accompanying the request for action pursuant to Article 12(2) ELD and if yes, which ones?

Those who have the right of administrative appeal may also request action from the authorities, cf. Act on Environmental Liability Sec. 36 and the relevant sectoral laws. The request must be accompanied by relevant information to support the request, e.g. scientific information.

4) Are there specific requirements regarding ‘plausibility’ for showing that environmental damage occurred, and if yes, which ones?

No, see above 1.8.3.2.

5) Is a certain manner required and/or time limits set, and if yes, which ones, as regards the notification of the decision by the competent authority to the entitled natural or legal persons (including the entitled environmental NGOs)?

The competent authority must inform the entitled persons of a draft decision and set a deadline of at least 4 weeks to comment on the draft decision, cf. Act on Environmental Liability Sec. 38.

6) Does the MS apply an extension of the entitlement to request action by competent authority from damage to the environment in cases of imminent threat of such damage?

The right to request action also applies in cases of imminent threat of damage.

7) Which are the competent authorities designated by the MS?

In most cases, the local authorities will handle the initial stages according to the relevant legislation. If there is environmental damage as defined in the legislation the case will be transferred to the Minister for Environment and Food. In practice cases will be handled by the Environmental Protection Agency.

8) Does the MS require that the administrative review procedure be exhausted prior to recourse to judicial proceedings?

The MS does not require that the administrative review procedure be exhausted prior to recourse to judicial proceedings.

1.8.4. Cross-border rules of procedures in environmental cases

1) Rules on involving other countries? At which stage of the procedure is there a possibility to challenge environmental decisions?

The Act on Environmental Assessment includes a specific Section 38 on transboundary effects and the obligations to provide information to other countries. There are also provisions to ensure information to potentially affected countries in case of environmental damages, e.g. Environmental Protection Act Sec. 73g. There are no specific rules on access to justice for e.g. foreign NGOs. Thus, the general rules will apply.

2) Notion of public concerned?

The Act on Environmental Assessment defines the public as including the broad notion of the public as well as the public concerned. This is also relevant in relation to cross border hearings.

3) Do NGOs of the affected country have standing? When and to what court should they submit their appeals? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

There are no special rules on appeals for foreign NGOs. The general rules for administrative appeals as well as judicial review etc. apply, see above 1.4.3.

4) Do individuals of the affected country have standing? What procedural assistance are they eligible for (legal aid, request for injunctive relief, interim measures, pro bono)?

There are no specific rules regarding standing of individuals. The general rules for administrative appeals as well as judicial review applies, see above 1.4.3.

5) At what stage is the information provided to the public concerned (including the above parties)?

According to the Act on Environmental Assessment, information on potential transboundary effects must be provided regarding draft plans or programmes as well as environmental impact statements for EIA projects before a permit is granted. Information will be provided to the authorities of the affected state.

6) What are the timeframes for public involvement including access to justice?

A reasonable timeframe must be established for submission of comments to draft plans. For environmental impact statements, the interpretation is normally 8 weeks, which is the same time limit for public consultation in Denmark. With effect from 1 January 2021, the timeframe for cross border consultations has, however, been set at minimum of 30 days. The general timeframes apply for standing in relation to administrative appeals or judicial review.

7) How is information on access to justice provided to the parties?

There are no specific rules on provision of information on access to justice. The information will be provided in the same way as nationally.

8) Is translation, interpretation provided to foreign participants? What are the rules applicable?

See above 1.7.4.5.

9) Any other relevant rules?

There are no other relevant rules.

[1] Guidance on the Act on Administrative Decisions.

[2]See also case C-529/15.

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