Access to justice in environmental matters

Denmark

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I. Constitutional Foundations

The Danish Constitution from 1953 does not enshrine a right to a clean or healthy environment. Regarding access to justice it follows from Article 63 of the Constitution that any question about the limits of public authority can be brought to the courts. The Constitution does not specify who can bring such cases to the courts. This is determined by the standing requirements applied by the courts. International agreements are only considered a 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 can, 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, according to EU law, be directly applicable in the Member States if the provisions are sufficiently clear and precise. Under those circumstances administrative bodies and courts are obliged to apply the Aarhus Convention directly.

II. Judiciary

Denmark has a system of general courts that deals with both criminal and civil cases, including cases challenging administrative decisions. There are no general administrative courts; although, they can be established according to the Danish Constitution. The general court system consists of 24 district courts, two high courts (the Eastern and Western High Court) and one Supreme Court. According to the 2007 court reform all cases will start in the district courts. A district court may, however, refer cases on matters of principle to the relevant high court. The more specific composition of the courts depends upon the type of the case, e.g. a criminal case or a civil case. The Supreme Court consists of one president and 15 Supreme Court judges. Court rulings are normally made by a minimum of five judges. The Eastern High Courts consist of one president and 56 judges, whereas the Western High Court consists of one president and 36 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). In administrative matters the role of the courts is to oversee the public authorities. This includes judicial review of the 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. There are no specialized courts dealing with environmental cases. However, Denmark has a long tradition of specialized administrative appeal bodies or tribunals dealing with appeals of administrative decisions. In environmental matters the Nature and Environmental Appeals Board (Natur- og Miljøklagenævnet – http://www.nmkn.dk/) deals with administrative appeals. The Appeals Board is organizationally part of the Ministry for the Environment, but it operates independently from instructions from the minister. Administrative decisions made under a broad range of environmental legislation, including the Environmental Protection Act, the Nature Protection Act and the Planning Act can be appealed to the Nature and Environmental Appeals Board. Relevant legislation determines who can appeal and which decisions can be appealed to the Board. In general, there is a broad access to appeal by individuals as well as NGOs.

The Nature and Environmental Protection 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 new board has two distinct configurations:

a lay configuration consisting of a chairman (permanent staff qualified as judges), two Supreme Court judges and seven members appointed by Parliament. and,

an expert configuration consisting of a chairman (permanent staff qualified as judges) and a number of experts - normally two or four.

The lay board mainly deals with appeals related to planning and nature protection, while the expert board mainly deals with appeals related to pollution and chemicals. The board has a fairly wide discretion to delegate decision-making to the chairman. It is possible that in special cases the two board configurations may join into one combined board. It is also possible that an appeal case in special circumstances may be transferred from the lay board to the expert board and vice versa. 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 Nature and Environmental Appeals Board, or the general courts. Access to the Nature and Environmental Appeals Board is easy and cheap. An appeal shall 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 shall forward the appeal to the Appeals Board together with relevant information. A small fee (2012: 500 DKK) 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. The Appeals Board shall provide the necessary information for making a decision in the case.

Unless explicitly limited by law the Appeals Board can make a full review of the administrative decision, including matters of legality as well as discretionary matters (merits). The Appeals Board may use cassation and return an invalid decision to the authority or in case of full review replace the decision with a new decision on the merits (reformatory). The decision of the Appeals Board can be brought to the courts normally within 6 months.
Bringing a case to the courts is generally more cumbersome than bringing a case to the appeal board. It will normally be necessary to have the assistance of a lawyer and a court case can become much more expensive. The courts will only review the claims and arguments brought forward by the parties to the case. In civil and administrative cases a lawsuit shall be lodged to the relevant (district) court by a written application. Normally, a six-month deadline for challenging an administrative decision before the courts is set in the legislation. The court will announce the application to the defendant who can then submit a written reply. The court is obliged to offer a settlement pursuant to the Act on Administration of Justice Article 268. If there is no settlement the court will set the dates for the oral court meeting(s). It is possible to call in witnesses and to request expert opinions. The ruling of a district court can be appealed to the Eastern or the Western High Court. The courts may annul administrative decisions and return the decision to the authority (cassation). The courts may also replace an administrative decision with a new decision, e.g. grant or deny a permit. However, the courts are generally very reluctant to review the more discretionary powers of the authorities and will normally not make a new decision based on the merits of the case. There are no specificities of judicial procedures in environmental matters. Generally, the courts rely on the presentation of the case by the parties and cannot take initiatives on their own. The courts may, however, decide to initiate a preliminary ruling procedure at the EU Court of Justice without being asked to do so by one of the parties.
Greenland and the Faroe Islands that are part of the Danish Kingdom have special courts systems and rules.

III. Access to Information Cases

Decisions regarding access to environmental information can be appealed to the relevant appeal authority; in most cases this is the Nature and Environmental Appeal Board. This is also an option if the decision has been made by a public service company and there is no other appeal instance. It is also possible to bring decisions on access to environmental information to the courts. A refusal of request of information shall include information on the options for appeal. If you request environmental information, a decision shall be made within one month – in more complex matters up to two months. An appeal shall be submitted to the authority that made the decision on access to information within the deadlines specified for appeals in the relevant legislation. The authority is generally obliged to reconsider the decision and shall forward an appeal to the Appeals Board within three weeks if the decision is upheld. There are no format requirements or requirements of mandatory counsel. The appeal authorities or the courts must have access to the disputed information in order to determine whether the request shall be met or not. The appeal authority and the courts may then determine whether the information shall be disclosed or not.

IV. Access to Justice in Public Participation

Public participation is a mandatory requirement in some parts of environmental decision-making in Denmark. This includes, in particular, the Danish land use planning system with a system of prior public consultation before a plan proposal is presented, as well as a public consultation process after the publication of a plan proposal according to the Planning Act. The procedure for environmental impact assessment (EIA) of land-based activities is incorporated into the planning process and thus has a similar double public consultation process. EIA for offshore activities is regulated through sectoral legislation and there is normally no public consultation prior to the drafting of the assessment report, but only public consultation after the drafting of the report and prior to the decision. Public consultation prior to the issuance of permits may vary from one permit system to another. In most cases there is no or only limited prior public consultation. Regarding, environmental permits or licenses, according to the Environmental Protection Act, the mandatory public consultation requirement only applies to those installations that are listed as IPPC-installations. Decisions shall be published together with information on appeal options.
In general, decisions adopted under environmental and planning legislation can be appealed to the Nature and Environment Appeals Board. It is stipulated in the relevant legislation which decisions can be appealed to the appeal board. It is also stipulated if a decision cannot be subject to administrative appeal. Administrative decisions can, in accordance with the Danish Constitution, be brought to the courts. There is normally no requirement that administrative appeal or other remedies shall be exhausted before bringing a case to the courts. In principle, the Danish Constitution does not restrict the judicial review of the courts to matters of legality. In practice, however, the Danish courts do normally not review matters involving the discretionary powers of the authority. The courts review the limits of such discretionary power, e.g. as determined by the principle of proportionality. Thus, the courts will review whether a decision is flawed or disproportionate, but not whether a decision is appropriate. The courts may also look into material and technical findings and calculations if such issues are being put forward by one of the parties. The courts may thus accept or reject claims that e.g. an environmental impact assessment was inadequate. They are, however, unlikely to review more technical aspects in detail. The review of the Nature and Environment Appeals Board is stipulated in the relevant legislation. In most cases the appeals board performs a full review including also discretionary matters. The scope of review may, however, be explicitly restricted to matters of legality. For example, reviewing land use plans where the appropriateness of a plan cannot be reviewed by the board according to the Planning Act. Land use plans and zoning decisions can be reviewed both by the Nature and Environment Appeals Board and the courts. While administrative appeal of land use plans to the appeal board is restricted to matters of legality, this is not the case regarding administrative appeal of zoning decisions (in the form of rural zone permits) that can be reviewed in full by the appeal board. Land use plans can be appealed to the Nature and Environment Appeals Board by a very wide group of individuals as well as NGO’s. The group of individuals that can appeal rural zone permits is, in practice, more narrowly defined to those that are individually affected. A wide group of NGOs can appeal such decisions. Although not stipulated by law it is likely that the same group of individuals and NGOs will have standing before the courts in such matters. The courts are most likely to only review the legality of both plans and zoning decisions.
Decisions on whether an EIA is necessary or not, EIA screening decisions can be appealed to the Nature and Environment Appeals Board, according to the Planning Act. A broad group of individuals and NGOs can appeal such decisions. It is not necessary to have participated in public consultation procedures to have access to appeal. An EIA screening decision is considered a matter of legality that can be reviewed by the appeals board. EIA screening decisions can also be brought to the courts. The courts will review the legality of the decisions, but are unlikely to review technical matters in detail. There are no formal EIA scoping decisions in the Danish EIA system and, as a consequence, normally no separate access to administrative appeal on such matters exists. If a developer is requested by the authorities to produce specific information such a decision can be appealed on matters of legality according to the Planning Act. Otherwise issues concerning the scope of an EIA can be reviewed as part of an appeal of the EIA as such. A final EIA decision in Denmark is normally divided into two parts:
adoption of a municipal planning guideline accompanied by an environmental impact report, and
an EIA permit.
Both decisions can be appealed to the Nature and Environmental Appeal Board. The plan document and report can be appealed on matters of legality, whereas the EIA permit can be appealed in full, including matters of discretion or appropriateness pursuant to the Planning Act. The appeal board will to some extent review the material and technical findings and calculations. If an EIA report is considered inadequate (more than insignificant flaws) it will be rejected and returned to the relevant authority. The EIA decisions can also be reviewed by the courts. The courts are likely to be more reluctant to review technical matters and the discretion of the authorities. If EIA decisions are appealed to the Nature and Environment Appeals Board or to the courts the appeal will normally not suspend or stop the project from being carried out. The appeal board may, however, decide that the appeal shall suspend the project

permit or plan. There are no formal or procedural requirements for such a decision – it is the Board that considers whether suspensive effect would be appropriate or not. If an EIA decision is reviewed by the court it is also possible for the court to grant suspensive effect. The courts are, however, quite reluctant in granting suspensive effect or injunctive relief and may require a safety deposit from the applicant. Environmental permits or licenses, including IPPC decisions or authorizations, can be appealed to the Nature and Environment Appeals Board according to the Environmental Protection Act. They can be appealed by persons who are individually and significantly affected and by NGOs, in particular NGOs that safeguard nature and environment pursuant to the Environmental Protection Act. It is not a requirement to have participated in the public consultation regarding IPPC-installations. For individuals the key question is whether you have an individual and significant interest or not. The appeal board reviews the decision in full, including procedural matters as well as matters of substance and discretion. The board in its expert configuration will seek to verify material and technical findings and calculations. The courts may also review environmental permits or IPPC decisions. The courts are, however, unlikely to look into technical matters and discretionary issues. If an environmental permit is appealed the appeal will not suspend or stop the permitted activity from being carried out. The Nature and Environment Appeals Board may, however, decide that the appeal suspends the decision. There are no procedural requirements.

V. Access to Justice against Acts or Omissions

Claims against private individuals or legal entities in environmental matters submitted to the courts will normally be based on private law such as a liability or nuisance claim. Claims related to the lack of compliance with public law obligations can normally only be submitted to the courts by the relevant authority. There are a few exceptions to the latter. The Planning Act explicitly provides for a private lawsuit in case of lack of compliance with provisions set in a local plan. When it comes to non-compliance with public obligations by the public authorities themselves, including state bodies, it is generally considered that claims can be submitted to the courts on the basis of the Danish Constitution. A claim must be well founded and sufficiently clear and precise. It is also necessary to demonstrate a sufficient legal interest in the claim. A special set of rules applies to environmental liability in the form of the public law obligations following from the implementation of the EU Environmental Liability Directive. It is normally the local authorities – municipalities – that will determine in the first stage whether there is an environmental damage as defined in the Directive. The case will then be transferred to the Ministry for the Environment (the Environmental Protection Agency). A private individual or NGO may, however, request the Ministry to take action if it considers that there is an environmental damage, according to the Act on Environmental Damage. Such a request can be submitted by the group of persons and/or NGOs that have access to administrative appeal. A request shall be accompanied by relevant information. Decisions made upon such requests can be appealed within four weeks to the Nature and Environment Protection Appeals Board according to the Act on Environmental Damage. Any persons that are individually and significantly affected can appeal alongside with national and local NGOs that safeguard nature and environment. A decision can also be brought to the courts within a 12 month deadline. There are no specific conditions for review of such decisions.

VI. Other Means of Access to Justice

Apart from the option of appeal to the Nature and Environment Appeals Board 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 the State Supervisory Authority. 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 State Supervisory Authority 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 State Supervisory Authority determines whether a complaint should lead to further investigations. The Supervisory Authority may review the legality of acts or omissions. The Supervisory Authority may 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 State Supervisory Authority, 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.

VII. Legal Standing

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. There is no actio popularis in Denmark giving everybody access to courts. In environmental matters the legislation specifies who has access to administrative appeal to the Nature and Environment Appeals Board. It is to some extent accepted that the group of persons and NGOs that have a right to administrative appeal will normally also be considered to have a sufficient legal interest to bring the case to the courts. This has to be determined on a case by case basis, however. The rules on who has access to administrative appeal differ from one area to another. For individuals it may range from being only the addressee (e.g. the Nature Protection Act), to those individually and significantly affected (e.g. the Environmental Protection Act) and to a broad group of citizens (the Planning Act). For NGOs there is more common ground as a consequence of the implementation of the Aarhus Convention. NGO access to appeal is not limited to EIA and IPPC decisions but applies more widely in environmental legislation. In general, nationwide NGOs having protection of nature and environment or recreational interests as their main purpose have access to administrative appeal in environmental matters. Local organizations generally also have access to administrative appeal, however, with some variations from one area to another. This may include ad-hoc groups. 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 under the Danish Environmental Protection Act access to administrative appeal on equal terms. This non-discrimination principle is likely to apply in other situations as well. Whether foreign NGOs can appeal will most likely depend upon whether the NGO can be said to be affected by the decision. An authority will normally only have access to administrative appeal if this is stipulated by law. In relation to access to courts it will depend upon whether the authority has a sufficient legal interest. The public prosecutor has the power to initiate criminal proceedings and bring criminal cases to the courts.

VIII. Legal Representation

Legal representation is not compulsory in administrative appeal or judicial procedures in environmental matters. In administrative appeals the appeal 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. A recommended solution regarding court cases is to seek advice from law firms that are either specialized or have specific and documented expertise in environmental matters. There are no NGOs specialized in giving advice to private individuals regarding administrative appeals or

court cases in environmental matters. Some NGOs have significant expertise in environmental cases – most often in administrative appeals, e.g. the Danish Society for Nature Conservation. Only few environmental court cases are initiated by NGOs.

IX. Evidence

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. 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. The court may prior to the court negotiations 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. There are no restrictions on what kind of evidence may be presented. The court will reject irrelevant evidence, though. If a party requests an expert opinion he/she shall make a suggestion for the questions to be asked. The opposing party shall have the opportunity to comment on the suggestion and the court then approves the questions. 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. On the basis of the court negotiations and the evidence provided, the court determines the circumstances that are decisive to the case. The court makes a free evaluation of evidence. Expert opinions are not binding on the court.

X. Injunctive Relief

An appeal to the courts does not suspend an administrative decision, as written in the Danish Constitution Article 63. The court may, however, in specific circumstances grant suspensive effect or injunctive relief. The courts are in general very 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. It is possible to request a court order to prevent action in a civil (private) lawsuit, according to the Act on Administration of Justice Article 641. 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. Regarding administrative appeals to the Nature and Environment 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 or a plan will not suspend the decision. The Nature and Environment Appeals Board may, however, decide otherwise when an appeal has been submitted.

XI. Costs

In administrative appeals to the Nature and Environment Appeals Board there is a general fee of 500 DKK as of 1 August 2012. A special fee of 3.000 DKK for NGO's and other legal entities introduced with effect from 1 January 2011 was withdrawn in 2012. The Aarhus Convention Compliance Committee in March 2012 found that the 3.000 DKK fee was in breach of Article 9(4) of the Convention. The administrative appeals fee will be refunded if the appellant is wholly or partly successful in the appeal. There are no further costs for private parties in administrative appeals – except for possible legal counsel. In court cases the court fees in 2012 include a standard fee of 500 DKK for bringing a case to the first instance court, see www.domstol.dk. If a case has a value of more than 50.000 DKK an additional fee of 1,2 % of the value above 50.000 DKK shall be paid with a maximum fee of 75.000 DKK for bringing the case to the courts. If the case proceeds to the court negotiations an additional fee will be paid for cases with a value of more than 50.000 DKK: 750 DKK + 1,2 % of the value above 50.000 DKK. If a case is appealed a new fee will be calculated on the basis of the value of the case at that point including a standard fee of 750 DKK in the high courts and 1.500 DKK in the Supreme Court. Most court cases that challenge administrative decisions will not have a value that exceeds 50.000 DKK and the court fee will accordingly be low. Apart from the court fees the parties to the case must pay the costs of e.g. expert opinions as well as lawyer fees. Both may be expensive. It is difficult to estimate expert fees and lawyer fees – a minimum fee of 1.500-2.000 DKK per hour might be appropriate (2012). Standard fees may apply for different types of cases. In some situations a safety deposit may be requested by the court to cover the potential costs. If an injunctive relief is granted a safety deposit may be required to cover the potential costs of delaying the project. Safety deposits will be determined by the court on a case by case basis. In general the "loser pays principle" applies in court cases, according to the Act on Administration of Justice Article 312. The court will in each case determine the costs to be paid by the losing party based on an estimate of costs for expert opinions and lawyers. If you lose a case brought against a public authority you may risk paying the court costs of the authority. The court may, however, in special circumstances decide that the losing party shall not pay the costs of the opponent. This could be the case if the opponent is a public authority or a big company. But, it very much depends on the specific circumstances and there are several examples of private applicants being ordered to pay the costs of public authorities (up to several hundred thousand DKK).

XII. Financial Assistance Mechanisms

The courts cannot grant exemptions from the court fees. The court fees do not, however, apply if the applicant is granted "free process" or if he/she has an insurance and fulfills certain criteria for maximum income. It is possible to apply for "free process" (or legal aid), according to the Act on Administration of Justice. Normally, you have to fulfill certain criteria regarding maximum income (as of 1.1.2012: 289.000 for a single income and 368.000 for a couple). In addition your case needs to be reasonably justified. More importantly in environmental matters it is possible that "free process" can 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 "free process" 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.

XIII. Timeliness

In general there are no time limits for public authorities to deliver a decision. The general rule is that a decision shall be made within reasonable time. Fixed time limits apply to requests for access to environmental information as well as to other requests for access to information. There are no formal sanctions against administrative organs for delivering decisions in delay. A complaint may, however, be submitted to the Ombudsman or, if regarding municipal and regional authorities, to the State Supervisory Authorities. In judicial procedures different time limits apply mainly for the parties. After the submission of an application a deadline of normally four weeks will be set for the defendant to submit a reply. The applicant and then the defendant will be given a second option to submit statements – normally within a four week deadline each. After that the main court negotiations may start. There are no formal deadlines at this stage. The ruling of the court shall be given as shortly 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 Article 219. The duration of a civil district court and high court case can easily be one year or more. In the Supreme Court the average duration is about two years. Criminal cases will normally be decided within a few months from the initiation of the court case. More complex criminal cases, including some environmental cases, may take a longer amount of time. Furthermore, the public prosecutor may spend some time deciding whether to bring a case to the courts and to investigate the case.

XIV. Other Issues

Most administrative environmental decisions are challenged by the public within the administrative appeal system, i.e. by appeal to the Nature and Environment Appeals Board. Almost all administrative decisions are announced publicly together with information on how to appeal the decision. A proposal has been made to establish an easily accessible and comprehensible electronic access point for administrative appeals in environmental matters. Some guidance is already available at http://www.nmkn.dk/, including a complaints form. Relatively few administrative environmental decisions are challenged before the courts. Most of the civil court cases are cases against the decisions of the Nature and Environment Appeals Board. Alternative dispute resolution

is not common in environmental matters in Denmark. In civil cases, first instance courts are normally obliged to seek a settlement between the parties in the case, according to the Act on Administration of Justice Article 268. The parties to a case may, however, also ask the court to appoint a mediator with the purpose of seeking an out of court agreement, according to the Act on Administration of Justice Article 272. The parties will pay the expenses. If an agreement is reached the court case can be lifted. Other types of alternative dispute resolution in environmental matters are not formalized.

XV. Being a Foreigner

Anti-discrimination clauses regarding language or country of origin are not formulated in the procedural laws – except for the Nordic Environmental Protection Convention and the Nordic Language Convention. The court language in Denmark is Danish, according to the Act on Administration of Justice Article 149. Translation of documents into Danish is normally required – unless both parties and the court accept the original language. Documents in the Nordic languages are normally accepted without translation. Translation is normally not provided and paid for by the government in civil court cases. In criminal court cases translation will be provided and paid for by the government, according to Circular 104/1989.

XVI. Transboundary Cases

Projects, plans or programmes that may have transboundary environmental effects in other countries shall be subject to an additional procedure ensuring consultation of countries that may be affected. In such cases the authorities of the relevant countries shall be notified in accordance with the Espoo Convention and the Act on Environmental Assessment of Plans and Programmes. Consultation of the public concerned in the relevant countries is then dependent upon the authorities of the country in question. There are no provisions in Danish legislation for direct consultation of the public in other countries. Members of the public in other countries are, however, not excluded from participating in the public consultation in Denmark. Access to the Nature and Environment Appeals Board or the courts is not restricted to Danish citizens, but is generally dependent upon whether the person has a sufficient legal interest. Foreign NGO's will normally not have access to administrative appeal or legal standing before the courts unless they represent a sufficient legal interest. The Nordic Environmental Protection Convention in Article 3 prescribes that any person affected by a nuisance from environmental harmful activities in another (Nordic) country shall have the same right to question the permissibility of such activities before the authorities or the courts as the citizens of that country.

Related Links

Website of the Danish courts: http://www.domstol.dk
Website of the Nature and Environment Appeals Board: www. nmkn.dk (Natur- og Miljøklagenævnet –)
Website of the official Danish legal information system: http://www.retsinformation.dk/
Text of the Nordic Environmental Protection Convention: http://sedac.ciesin.org/entri/texts/acrc/Nordic.txt.html

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